

SBC Tax Alert

18 June 2022

Central Board of Direct Taxes issues guidelines to remove difficulties in the application of TDS on benefits and perquisites introduced vide Finance Act 2022

In this Tax Alert, we have summarised the recent guidelines issued by the Central Board of Direct Taxes, India (CBDT) for the removal of difficulties in the application of Section 194R.

Section 194R of the Income-tax Act, 1961 (ITA) mandates a person, who is responsible for providing any benefit or perquisite to a resident, to deduct tax at source @ 10% of the value or aggregate of the value of such benefit or perquisites.

CBDT has issued these guidelines dated 16-June-2022 to provide clarity on numerous vexed issues like taxability in recipient's hands, nature of asset given, TDS compliance where cash component falls short, valuation, free medicines samples, sales discount and rebates, other incentives, out-of-pocket expenses, among others

Background to the Guidelines

- Section 194R inserted by the Finance Act, 2022 for TDS on benefits and perquisites would be operative and come into effect on 01-July-2022.
- TDS is applicable even if the benefit or perquisites is given in cash or kind.
- Rate of TDS is 10% of the value or aggregate value of such benefit or perquisite provide in a FY.
- Deduction is not required if the value of such benefits or perquisite does not exceed INR 20,000.

Key takeaways from the Guidelines

- **Person providing benefit or perquisite not to check taxability u/s 28(iv) of ITA in the hands of the recipient** – Section 194R on a different footing from Section 195. While in Section 195 the person responsible for paying any sum to non-residents is required to check the chargeability of the sum under the ITA, such an obligation is not casted for deductor u/s 194R. Taxability or non-taxability in the hands of the deductee is not to be a ground for non-application of 194R.
- **Benefit or perquisite can be in cash or in kind or partly in cash and partly in kind** – Guidelines provide that Proviso to the Section is apt to cover any kind of benefit and covers all the three situations
 - Completely in cash
 - Completely in kind
 - Partly in cash and partly in kind
- **Capital assets for deductee also to be covered** – Nature of benefit or perquisite in the hands of the recipient would not be the criteria. Even capital assets are covered and liable for TDS deduction.
- **Sales discount, cash discount and rebated NOT liable for TDS u/s 194R** – General sales discount, cash discount and rebates which effectively reduces the purchase price for the buyer would not be



liable to TDS. Further, additional free items on sale of a determined quantity of a product would not be liable to TDS. However, the following shall be liable for TDS u/s 194R

- Free samples
 - Any incentive other than sales discount, cash discount and rebates liable for TDS
 - Trip on achieving targets
 - Free ticket for events
 - Free medicine samples to medical practitioners
- **Benefits or perquisites given to relatives/employees of the recipient are also liable for TDS**
 - Benefits/perquisites may be used by the owner/director/employee of the recipient entity or their relatives who in their individual capacity may not be carrying on business or exercising a profession. However, TDS is applicable.
 - **Provisions of Section 17(2) for taxing the perquisites in the hands of employee to be checked if the recipient is liable for TDS u/s 194R** - Where an employee of any recipient receives a benefit/perquisite, the threshold and liability of TDS on recipient would arise. Recipient would further be required to check the liability for TDS u/s 192 to claim the same as business expenditure. (Especially in the case of hospitals)
 - **TDS where the Consultant of the recipient is provided the benefit/perquisite** – There may be a scenario where benefit/perquisite is provided to a doctor of a hospital who works as a consultant to the hospital. In such a situation TDS u/s 194R can be under the two alternatives
 - **Alternative 1:** Tax is deducted by the provider on hospital u/s 194R and then by the hospital on the consultant again u/s 194R
 - **Alternative 2:** Tax is directly deducted from the consultant by the provider u/s 194R
 - **Valuation of benefit/perquisite** – The following are the key points to be noted:
 - FMV of the benefit/perquisite to be taken for the purpose of TDS **except in the following cases**

Benefit/perquisite	Value for TDS u/s 194R
Purchased by provider for giving it to recipient	Purchase price in the hands of provider
Provider is the manufacturer of the same	Price normally charged to customers

 - GST is not to be included in valuation
 - **Product given to social media influencer if not returned to provider liable for TDS** – Where the product is retained by social media influencer after making audio/video about the product in social media, then it will be in the nature of benefit/perquisite liable for TDS u/s 194R



- **Out-of-pocket expenses (OPE) liable to TDS u/s 194R on a case-to-case basis** - Following are the three scenarios that may arise

Scenario	Particulars	Whether liable for TDS u/s 194R
1	<ul style="list-style-type: none"> - Service provider bills OPE to Company X - Invoices of OPE items are in the name of service provider - Service provider pays the amount initially for OPE 	Company X liable to deduct TDS u/s 194R
2	<ul style="list-style-type: none"> - Service provider bills OPE to Company X - Invoices of OPE items are in the name of Company X - Service provider pays the amount initially for OPE 	Company X is not liable to deduct TDS u/s 194R
3	<ul style="list-style-type: none"> - Invoices of OPE items are in the name of Company X - Company X pays the amount directly or at a later point in time to the third parties - OPE is mentioned in the bill for record purposes and not claimed as reimbursement 	Company X is not liable to deduct TDS u/s 194R

- **Dealer conferences to educate about the products not liable for TDS** - Expenditure pertaining to dealer/business conference would not be considered as benefit/perquisite in a case where dealer/business conference is held with the prime object to educate dealers/customers

Exceptions (i.e., situations where TDS u/s 194R shall be applicable):

- Conference for select dealers on achieving targets
 - Leisure trip or leisure component (even if incidental to educational conferences)
 - Expenditure of family members accompanying the dealers (even in the case of educational conferences)
 - Expenditure for prior stay or overstay to the dates of any type of conference
- **TDS u/s 194R where benefit/perquisite is in kind or partly in cash and partly in kind and the cash component is not sufficient for making TDS deduction** – Provisions of Section 194R that in such a situation the provider has to ensure that TDS required to be deducted is already paid by the recipient.

On the issue, how would the provider ensure that the TDS required to be deducted is already paid, CBDT has clarified as follows:

- Deductor to take a declaration and advance tax challan copy confirming that TDS required to be deducted is already paid. Provisions in Form 26Q shall be made for such declaration.
- Alternatively, the deductor can pay the TDS and such TDS paid shall also be liable for TDS u/s 194R as a benefit/perquisite



For example: If the FMV of the benefit/perquisite in kind is INR 30000 and TDS liable is 3000, then the total TDS liability u/s 194R shall be as follows:

Particulars	Amount in INR
FMV of benefit/perquisite in kind (A)	30,000
TDS on above benefit/perquisite (B)	3,000
Total benefit/perquisite for the purpose of 194R (A+B)	33,000
Total TDS liability u/s 194R	3,300

- **Threshold of INR 20,000 is to be reckoned from 01-April-2022, however, TDS is applicable only on transactions entered on or after 01-July-2022** – Threshold applicable to FY and hence if the limit of benefit/perquisite is breached before June 2022, then TDS applicable from every rupee of benefit/perquisite incurred from 01-July-2022. Benefits/perquisite provided on or before 30-June-2022 not liable for TDS.

SBC comments

While the CBDT guidelines provide much-needed clarification on the various issues which were unclear from the raw text or the memorandum explaining the introduction of Section 194R of the ITA, these clarifications would lead to various comprehensions and practical difficulties in the application of Section 194R would be tested only in coming times. Certain issues like the following may arise:

- Declaration of tax paid in the case where benefit/perquisite is given in kind and other documentation would add to the compliance burden of both the provider as well as the recipient.
- Valuation of market-linked/products with dynamic prices given as perquisite/benefits may be difficult and also be challenged by tax authorities increasing the scope and costs of litigation for the deductors.
- Valuation specifically in the case of leisure trips, conferences, pre and postdates of the trips involved would be a humongous task as the bookings are made inclusively for all the dates, family members, etc.
- TDS deduction u/s 192 for a benefit/perquisite to employee and claim of the same as expenditure in the hands of recipient may be checked. Where missed, such benefit/perquisite would get taxed in the hands of the recipient as the same would appear in its AIS.
- TDS on OPE is being done by most of the deductors mostly under 194J. A relook on the matter would be recommended. TDS on pure case reimbursements may still be challenged and may add to litigation for the deductors.

How can SBC help?

- TDS health check for applicability of Section 194R of ITA
- Assisting in valuation, quantifying the liability, obtaining required declarations, compliances, etc.,
- Case-to-case basis analysis and opinion on any specific instance for applicability of 194R





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