



N.A.SHAH ASSOCIATES LLP  
Chartered Accountants

# BULLETIN

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DIRECT TAX ALERT – JUNE, 2022



## **EXECUTIVE SUMMARY OF CBDT CIRCULAR UNDER DIRECT TAXES**

We are pleased to draw your attention to following CBDT circular which might be useful for you to take call on tax position.

Circular no 12/2022 dated 16.05.2022

The brief analysis of above CBDT circular is given below.

## DIRECT TAX ALERT

### **CBDT Guidelines - TDS on benefit or perquisite under section 194R**

Finance Act, 2022 introduced a new provision 194R in the Income tax act, 1961 w.e.f from 1<sup>st</sup> July 2022.

The new provision requires 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 value of such benefit or perquisite, before providing such 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.

No tax to be deducted at source if the value of benefit or perquisite provided to the resident during the financial year does not exceed INR 20,000.

The responsibility for deduction of tax at source does **not apply to** an Individual / HUF whose total sales / gross receipts / turnover from business does not exceed INR one crore, or from profession does not exceed INR fifty lakh, during the financial year immediately preceding the financial year in which benefit, or perquisite is provided by him.

Now, in exercise of powers conferred as per 194R(2), CBDT has provided following clarification/guidelines:


Question	Clarification
Is it necessary that the person providing benefit or perquisite needs to check if the amount is taxable under clause (iv) of section 28 of the Act, before deducting tax under section 194R of the Act?	The deductor is under no obligation to ascertain whether the amount of benefit or perquisite provided to a resident would be chargeable to tax in his hands u/s 28(iv) or any other section of the Act.
Is it necessary that the benefit or perquisite must be in kind for section 194R of the Act to operate?	Benefit or perquisite may be in cash or in kind or partly in cash and partly in kind in order to trigger provisions of section 194R.

<p>Is there any requirement to deduct tax under section 194R of the Act, when the benefit or perquisite is in the form of capital asset?</p>	<p>TDS is required to be deducted even though the benefit or perquisite is in the form of capital assets.</p>
<p>Whether sales discount, cash discount and rebates are benefit or perquisite?</p>	<p>Logically sales discount, cash discounts and rebates are also benefit or perquisites although related to sale / purchase activity hence it gets covered under the provisions of Section 194R of the Act. However, to remove difficulty from the point of view of seller, it has been clarified that no tax is required to be deducted on such amount under 194R of the Act.</p> <p>It has been also clarified that in case of <b>stock in trade</b>, where certain units are provided as free of cost (say 2 units) on purchase of minimum requisite quantity (say on purchase of 10 units @ Rs. 12 each), logically, the units that are provided free of cost are 'benefits or perquisites' as per 194R of the Act. However, from the point of view of seller, it is seen as 12 units sold for Rs.120/- and likewise even for purchaser it is seen as 12 units purchased for Rs.120/-. Therefore, to remove difficulty, it is clarified that no tax is required to be deducted on <b>such units which are provided as free of cost</b>.</p> <p>However, the relaxation of free unit shall not apply to other benefits provided by seller in connection with sale such as sponsorship of trip, free tickets for an event, giving medical samples free of cost to medical practitioners</p>

	<p>and incentives such as gold coin, car, mobile phone etc. on achieving targets.</p> <p>It is clarified that where the benefit or perquisite is used by a person other than recipient (i.e. Doctor being employee of Hospital etc.) by virtue of its relationship with the recipient, then tax will be required to be deducted in the name of recipient only and not in the name of person who is enjoying the benefits or perquisite.</p>
<p><b>How is the valuation of benefit/perquisite required to be carried out?</b></p>	<p>The valuation will be based on fair market value except in following cases:</p> <ol style="list-style-type: none"> <li>Where benefit or perquisite provider has purchased the benefit or perquisite provided by it to the recipient, then the <b>purchase price</b> will be considered as value for deduction of TDS u/s 194R of the Act.</li> <li>Where benefit or perquisite provider has manufactured the item, then value will be <b>price charged to customers for such item</b>.</li> </ol> <p>It is clarified that in no case GST shall form a part of value for deducting TDS u/s 194R of the Act.</p>
<p>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</p>	<p>It depends upon facts and circumstances of the case. Where the social media influencer returns the product after providing services, then TDS u/s 194R of the Act will not arise. However, where the social media influencer retains the products after providing the</p>

given to such influencer a benefit or perquisite?	service then TDS u/s 194R of the Act will be attracted.
<b>Whether reimbursement of out-of-pocket expense incurred by service provider in the course of rendering service is benefit/perquisite?</b>	<p>If invoice is in the name of service provider and reimbursed by service receiver, TDS is to be deducted.</p> <p>If invoice is in the name of service receiver, then no TDS.</p>
<b>If there is a dealer conference to educate the dealers about the products of the company - Is it benefit/perquisite?</b>	<p>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 any of the following or similar aspects:</p> <ul style="list-style-type: none"> <li>• new product being launched</li> <li>• discussion as to how the product is better than others</li> <li>• obtaining orders from dealers/customers</li> <li>• teaching sales techniques to dealers/customers</li> <li>• addressing queries of the dealers/customers</li> <li>• reconciliation of accounts with dealers/customers.</li> </ul> <p>It has also been clarified that conference must not be incentives/benefits to select dealers/customers who have achieved targets.</p>


	<p>However, in following cases it will be considered as a benefit or perquisite:</p> <ul style="list-style-type: none"> <li>• Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer / business conference.</li> <li>• Expenditure incurred for family members accompanying the person attending dealer/ business conference</li> <li>• Expenditure on participants of dealer/business conference for days which are on account of prior stay or overstay beyond the dates of such conference.</li> </ul>
<p><b>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 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?</b></p>	<p>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 along with challan number. This year Form 26Q has included provisions for reporting such transactions.</p> <p>Alternatively, the deductor may pay TDS from his own pocket. However, it shall be noted that the amount of TDS paid by deductor from own pocket will also be considered as a 'benefit or perquisite' as per 194R of the Act.</p>
<p><b>Section 194R would come into effect from the 1<sup>st</sup> July 2022. Second proviso to subsection (1) of section 194R of the Act provides that the provision of</b></p>	<p>The value of benefit or perquisite shall be counted from 1<sup>st</sup> April 2022 for the purpose of threshold. However, tax will be required to be</p>



<b>this section does not apply where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to a resident during the financial year does not exceed twenty thousand rupees. It is not clear how this limit of twenty thousand is to be computed for the Financial Year 2022-23?</b>	deducted on all benefits or perquisites provided on or after 1 <sup>st</sup> July 2022.
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We will be glad to provide any elaboration or elucidation you may need in this regard.





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B 21-25 & B41-45, Paragon Centre,  
Pandurang Budhakar Marg, Mumbai – 400013  
Tel: 91-022-4073 3000, Fax: 91-022-4073 3090  
E-mail Id: [info@nashah.com](mailto:info@nashah.com)

