EAP GURUKUL

TDS on Benefits & Perquisites in respect Of Business or Profession.

Section 194R of the Income Tax Act 1961.

TDS ON BENEFITS AND PERQUISITES

BACKGROUND

Tax Deducted at Sources (TDS) and Tax Collected at Sources (TCS) are the sources of the collection of the taxes in advance by the government. Such Methods helps Government to increase the tax collection.

TDS means deduction of tax from the payment made to the person for whom such payment is in the nature of income. Hence tax is collected on such income by Government through person making such payment.

TCS refers to the collection of tax from the person making the payment for certain expenses. Though such payment is in the nature of expenditure for the payer, tax is collected on the assumption that such payment is linked to certain income.

Honorable Finance Minister Nirmala Sitaraman in her Budget speech 2022 has come up with certain new provisions pertaining to ***TDS on benefits and perquisites*** which is effective from 01.07.2022. This EAP publication is summary of such provision stated in Section 194R of the Income Tax Act, 1961.

LEGAL PROVISIONS

(1) 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.]

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EAP ANALYSIS OF THE PROVISIONS

Applicable to whom?

- Every person providing a benefit or perquisite during the course of business or profession.
- Excluding Individual or HUF having Business receipts / sales less than Rs.1crore or Professional receipts less than Rs.50 lakhs in the previous Financial year.

Salient Features

- Applicable on all benefits or perquisites provided, irrespective of its treatment in hands of recipient.
- TDS is applicable on value exceeding Rs.20,000/- during the financial year (value to exclude GST)
- The benefit or perquisite may be in cash or kind or partly in cash and kind.
- Applicable only to transactions undertaken from 01.07.2022
- Liability to deduct TDS is on the person who has agreed to provide the benefit and not the person who is acting on behalf of such person to provide the benefit.

Rate of TDS

- TDS Rate will be 10% of the value of benefit or perquisite.
- If the deductee does not furnishes his PAN, then provisions of section 206AA will be applicable.
- If the deductee does not furnishes the return of income for the specified period, TDS under section 206AB will be applicable.
- The deductee has no option to apply for lower rate of TDS under this provision.

INSIGHTS OF THE PROVISION :

- All kinds of promotional benefits incurred will be covered under this provision.
- The focus is on expenses incurred in the form of business/sales promotion, marketing etc, which will now be covered under TDS.
- Only Benefits or Perquisite having business connection will be covered.
- In case there is an employer – employee relationship, then the perquisite shall be covered for TDS under section 192.
- If recipient is Non – Resident, provisions of section 195 shall be applicable.
- **Due to this provision, the recipient of such benefit or perquisite, will have to disclose such transaction as his income. GST impact in the hands of recipient needs to be analyzed.**

TDS ON BENEFITS AND PERQUISITES

FREQUENTLY ASKED QUESTIONS

Sr. No.	Question	EAP Reply
01.	Whether one needs to check if the benefit or perquisite provided is taxable as business income under section 28(iv) of the Act?	No, you do not have to check if the benefit or perquisite will be taxable under section 28(iv) in the hands of recipient. Deductor's responsibility is to deduct TDS @10% and not to check how the person receiving, will show it as Income in his hands.
02.	What if the person receiving benefit or perquisite is a Non-Resident?	As specified in Circular No 12 of 2022, this will be covered under section 195 of the Act.
03.	Whether the benefit or perquisite should be in kind only?	All modes of benefits or perquisites are covered here. They can be in cash, in kind, or partly in cash and partly in kind.
04.	What is meant by turnover during financial year immediately preceding the financial year in which such benefit or perquisite is provided, in case of Individual or HUF ?	The deductor needs to check his turnover of previous financial year. Eg. For applicability in FY 2022-23, turnover of FY 2021-22 shall be checked.
05.	For Calculating Rs.20000/- limit for benefit or perquisite provided, whether transactions from 01.04.2022 to be considered or transactions from 01.07.2022 to be considered?	The limit of Rs.20,000/- is qua recipient qua year. For calculating transaction limit, transactions for the year needs to be checked. For FY 2022-23, transactions from 01.04.2022 to be considered.
06.	If in any year Turnover is less than Rs.1 crore for business and Rs.50 lakhs for profession, will the section be still applicable on continuous basis for all subsequent years?	For applicability of this section, every previous financial year's turnover to be checked. It is year on year basis. If turnover of the previous financial year is less than the specified limit, provisions of section 194R will not be applicable.

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07.	What if the value of benefit or perquisite crosses Rs.20000/- before 01.07.2022 ?	For calculating the limit of Rs.20000/- , one need to verify transactions from 01.04.2022. However, for deducting TDS, the transactions undertaken from 01.07.2022 will be covered. Eg : If upto 30.06.2022, perquisite provided is Rs. 5000/-, and on 02.07.2022, perquisite provided is Rs.10000/-, then TDS will be not be applicable. Eg: If upto 30.06.2022, perquisite provided is Rs.25000/-, and on 02.07.2022, perquisite provided is Rs.40000/-, then TDS will be applicable on Rs.40000/- only.
08.	What if the benefit or perquisite provided is a Capital Asset ?	Even if the perquisite or benefit is a Capital Asset, TDS will be applicable. The section does not differ transactions which are of capital or revenue in nature. e.g. A TV or a Mobile or Car is given free of cost, then the TDS shall be applicable on the value of such particular item.
09.	Whether sales discount, cash discounts and rebates are benefits or perquisites ?	Based on specific clarification provided by the Circular 12 of 2022, TDS will not be applicable on sales discounts, cash discounts and rebates even though they are in the nature of benefits or perquisites.
10.	In a scenario, when 2 items are given free, along with 10 items purchased, whether the same would be treated as benefit?	It will not be a benefit or perquisite. Specific exclusion is provided in Circular 12 of 2022.
11.	Whether free samples are benefits or perquisites?	Yes, free samples are benefits as per the provisions of section 194R and TDS will be applicable. Eg: Free samples given by Pharma companies to Doctors or Hospitals.

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12.	Whether incentives, other than discount or rebate, in the form of cash or kind, like Car, TV, Computer, Gold coin, Mobile, etc, are benefit or perquisites ?	Yes, they are covered under this provision.
13.	Whether trips sponsored for the recipient and its family in form of incentive, covered under this section?	Yes, they are covered under this provision.
14.	Whether free ticket to a event is covered here ?	Yes, if provided during the course of business or profession.
15.	What if the recipient of such benefit or perquisite is not carrying on business or profession ?	The provision requires to check if the provider of benefit is exercising such transaction for its business or profession. No need to check the position of the recipient.
16.	What if the benefit is provided to Mr. X, but is used by Mr. Y (his relative)?	The utilization of the benefit, does not transfer along with the actual utilizer. Since, Mr. Y is able to use the benefit only because he is relative of Mr. X, TDS will be required to deducted in the name of Mr. X.
17.	ABC Pharma Ltd. Provides free samples of medicines to doctors working with XYZ Hospital. TDS will be deducted against whose PAN?	In this situation, free samples are distributed to doctors because they are associated with XYZ hospital, hence, TDS will be deducted against the PAN of hospital. The hospital will utilize the TDS so deducted while filing its return of income and they may further deduct TDS under section 194R in the hands of those consultant doctors who have utilized the medicines so received.

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18.	How to value benefits or perquisites?	In normal circumstances, valuation shall be done on its Fair Market Value. Where the benefit or perquisite provided, has been purchased, then value shall be its purchase price. Where the benefit or perquisite provided, is being manufactured by the provider, value shall be the price it would charge to its customers.
19.	On what amount TDS will be deducted, Inclusive of GST or Exclusive Of GST?	As per Circular No 12 of 2022 dated 16.06.2022, the transaction value shall exclude GST.
20.	What about products offered to Social Media Influencer?	If the benefits or perquisite is in the form of product and the same is returned to the provider after using it for providing the service of marketing, then it will not be covered under this provision. However, if such product is retained by the influencer, then the same would be liable for TDS.
21.	Whether reimbursement of out of pocket expenses incurred by service provider in the course of rendering services, is covered under this provision?	In case, Mr. A is the service provider to PQR Ltd. For providing the services, Mr. A incurred some travelling expenditure. In this case, TDS will be applicable if the invoices for such travelling expenditure are in the name of Mr. A, the service provider. However, if the invoices were in the name of PQR Ltd, and the same was reimbursed to Mr. A or directly paid, then TDS will not be applicable.

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22.	Whether dealer conference is covered under benefit / perquisite?	Dealer conference held for the purpose of educating the dealers, taking orders, informing of new product, resolving queries, etc, are not considered as benefit or perquisite. However, if they are in the nature of incentive or benefit on achievement of some specific targets, then it is covered under this provision.
23.	What if a person is visiting a conference for the launch of a new product and his family is accompanying on such trip?	Expenditure incurred for the family of such person will account for benefit or perquisite and hence TDS will be applicable. Also, in case such person overstays beyond the conference, then such expenditure towards his over stay period will also be covered here.
24.	What if the benefit or perquisite is completely in kind or the cash component is not sufficient for deducting TDS?	As per circular 12 of 2022 dated 16.06.2022, in case where cash component is not sufficient to meet TDS liability, the deductor has following two options: 1. The recipient may pay the tax on this transaction in form of advance tax and give the deductor a declaration for the same along with the advance tax challan OR 2. Pay TDS on this transaction by grossing the value of TDS in benefit or perquisite under section 194R. Eg : Value of mobile gifted is Rs.90,000/-, then ideally TDS should have been at 10% i.e. Rs.9,000/-. But since there is no cash transaction, you will have to consider the TDS also a benefit and go ahead with grossing up formula. Meaning, Rs.90,000/- will be 90% of the consideration and therefore, value of perquisite is Rs.1,00,000/- and TDS will be Rs.10,000/-

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25.	How will the transactions reported in situation where recipient is paying the tax in form of advance tax ?	For cases where the recipient is paying tax in form of Advance Tax, the deductor will have to report the transaction in their TDS return in form 26Q. The Form now provides option to update such transactions covered.

 # Please refer Circular No 12 of 2022 dated 16.06.2022, issued by CBDT for guidelines on Section 194R.

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Circular No. 12 of 2022

F. No. 370142/27/2022-TPL
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)
****

New Delhi, dated 16th June, 2022

Subject: Guidelines for removal of difficulties under sub-section (2) of section 194R of the Income-tax Act, 1961

Finance Act 2022 inserted a new section 194R in the Income-tax Act, 1961 (hereinafter referred to as "the Act") with effect from 1st July 2022.

The new section 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 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.

This deduction is not required to be made, if the value or aggregate of value of the benefit or perquisite provided or likely to be provided to the resident during the financial year does not exceed twenty thousand rupees.

The responsibility of tax deduction also does not apply to a person, being an Individual/Hindu undivided family (HUF) deductor, whose total sales / gross receipts / gross turnover from business does not exceed one crore rupees, or from profession does not exceed fifty lakh rupees, during the financial year immediately preceding the financial year in which such benefit or perquisite is provided by him.

Sub-section (2) of section 194R of the Act authorises the Board to issue guidelines, for removal of difficulties, with the approval of the Central Government. These guidelines are required to be laid before each House of Parliament and are binding on the income-tax authorities and the person providing the benefit or perquisite.

Accordingly, in exercise of the power conferred by sub-section (2) of section 194R of the Act, the Board, with the prior approval of the Central Government, hereby issues the following guidelines:-

Guidelines

Question 1. 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?

Answer: No. The deductor is not required to check whether the amount of benefit or perquisite that he is providing would be taxable in the hands of the recipient under clause (iv) of section 28 of the Act. The amount could be taxable under any other section like section 41(1) etc. Section 194R of the Act casts an obligation on the person responsible for providing any benefit or perquisite to a resident, to deduct tax at source @10%. There is no further requirement to check whether the amount is taxable in the hands of the recipient or under which section it is taxable.

In this regard it may be highlighted that in the context of section 195 of the Act it is a requirement to know whether the payment made by the deductor is income in the hands of the non-resident recipient as section 195 of the Act requires deduction on **any other sum chargeable under the provisions of this Act** at the **rates in force**. Thus there is requirement that deductor needs to verify if the "sum is chargeable under the Income-tax Act". The term "rate in force" is defined in clause (37A) of section 2 of the Act and it allows benefit of agreement under section 90 or section 90A of the Act, if eligible, in determining the rate of tax at which the tax is to be deducted at source. Hence, there is further requirement of checking if the amount is taxable under tax treaty and if yes, at what rate. Such a requirement is not there in section 194R of the Act, in the absence of these two terms in this section. Hence, there is no requirement for deductor to verify whether the amount is taxable in the hands of the recipient or section under which it is taxable.

It may also be highlighted that these two terms are also not there in section 194E of the Act and Hon'ble Supreme Court in the case of PILCOM vs. CIT West Bengal (Civil Appeal No. 5749 of 2012), held that tax is to be deducted under section 194E of the Act at a specific rate indicated there in and there is no need to see the taxability or the rate of taxability in the hands of the non-resident.

Question 2. Is it necessary that the benefit or perquisite must be in kind for section 194R of the Act to operate?

Answer: Tax under section 194R of the Act is required to be deducted whether the benefit or perquisite is in cash or in kind. In this regard it is important to draw attention to the first proviso to sub-section (1) of section 194R of the Act, which reads as under:

> *"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:"*

This proviso clearly indicates the intent of legislature that there could also be situations where benefit or perquisite is in cash or the benefit or perquisite is in kind or partly in cash and partly in kind. Thus, section 194R of the Act clearly brings in its scope the situation where the benefit or perquisite is in cash or in kind or partly in cash or partly in kind.

Question 3. 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?

Answer: As has been stated in response to question no 1, there is no requirement to check whether the perquisite or benefit is taxable in the hands of the recipient and the section under which it is taxable.

Further, courts have held many benefits or perquisites to be taxable even though one can argue that they are in the nature of capital asset. The following judgments illustrate this point:

- Assessee entered into an agreement with 'J' for purchase of a plot of land and certain amount was paid as earnest money. However, possession of land was not given to assessee and seller entered into another agreement with a third party to develop the said plot. Assessee filed suit in which a consent decree was passed and in pursuance of same certain amount as paid to assessee. On appeal it was held that such sum received in pursuance of consent decree was liable to tax as business income under section 28(iv). Ramesh Babulal Shah v CIT (2015) 53 taxmann.com 277 (Bom)
- The amount representing principal loan waived by bank under one time settlement scheme would constitute income falling under section 28(iv) relating to value of any benefit or perquisite, arising from business or exercise of profession. CIT v Ramaniyam Homes (P) Ltd (2016) 68 taxmann.com 289 (Mad)
- Value of rent free accommodation, furniture and fixtures given to director was held as taxable under section 28(iv). CIT v Subrata Roy (2016) 385ITR 547 (All)
- Where a car was given to an assessee by his disciple, who had been benefited from his preaching, the value of car was held to be taxable in the hands of the assessee being a receipt from the exercise of the vocation carried on by him. CIT (Addl) v Ram Kripal Tripathi (1980) 125 ITR 408 (All)
- The assessee was a director of a company. In terms of an agreement with the promoters, shares were allotted to the director. On these facts, it was held that the shares received by the director were benefit or perquisite received from a company by the director and it was a benefit assessable to tax. D. M. Neterwala v CIT (1986) 122 ITR 880 (Bom)
- Value of gift of land was held as a receipt by the assessee in carrying on of his vocation and was held as taxable. Amarendra Nath Chakraborty v CIT (1971) 79 ITR 342 (Cal)

Thus, it can be seen that the asset given as benefit or perquisite may be capital asset in general sense of the term like car, land etc but in the hands of the recipient it is benefit or perquisite and has accordingly been held to be taxable. In any case, as stated earlier, the deductor is not required to check if the benefit or perquisite is taxable in the hands of recipient. Thus, the deductor is required to deduct tax under section 194R of the Act in all cases where benefit or perquisite (of whatever nature) is provided.

Question 4: Whether sales discount, cash discount and rebates are benefit or perquisite?

Answer: Sales discounts, cash discount or rebates allowed to customers from the listed retail price represent lesser realization of the sale price itself. To that extent purchase price of customer is also reduced.

Logically these are also benefits though related to sales/purchase. Since TDS under section 194R of the Act is applicable on all forms of benefit/perquisite, tax is required to be deducted. However, it is seen that subjecting these to tax deduction would put seller to difficulty. To remove such difficulty it is clarified that no tax is required to be deducted under section 194R of the Act on sales discount, cash discount and rebates allowed to customers.

There could be another situation, where a seller is selling its items from its stock in trade to a buyer. The seller offers two items free with purchase of 10 items. In substance, the seller is actually selling 12 items at a price of 10 items. Let us assume that 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. In such a situation, again there could be difficulty in applying section 194R provision. Hence, to remove difficulty it is clarified that on the above facts no tax is required to be deducted under section 194R of the Act. It is clarified that situation is different when free samples are given and the above relaxation would not apply to a situation of free samples.

Similarly, this relaxation should not be extended to other benefits provided by the seller in connection with its sale. To illustrate, the following are some of the examples of benefits/perquisites on which tax is required to be deducted under section 194R of the Act (the list is not exhaustive):

- When a person gives incentives (other than discount, rebate) in the form of cash or kind such as car, TV, 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 free ticket for an event
- When a person gives medicine samples free to medical practitioners.

The above examples are only illustrative. The relaxation provided from non-deduction of tax for sales discount and rebate is only on those items and should not be extended to others.

It is further clarified that these benefits/perquisites may be used by 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, the tax is required to be deducted by the person in the name of recipient entity since the usage by owner/director/employee/relative is by virtue of their relation with the recipient entity and in substance the benefit/perquisite has been provided by the person to the recipient entity.

To illustrate, the free medicine sample may be provided by a company to a doctor who is an employee of a hospital. The TDS under section 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. Thus, in substance, the benefit/perquisite is provided to the hospital. The hospital may subsequently treat this benefit/perquisite as the perquisite given to its employees (if the person who used it is his employee) under section 17 of the Act and deduct tax under section 192 of the Act. In such a case it would be first taxable in the hands of the hospital 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 hospital. Hospital can get credit of tax deducted under section 194R of the Act by furnishing its tax return. It is further clarified that the threshold of twenty thousand rupees in the second proviso to sub-section (1) of section 194R of the Act is also required to be seen with respect to the recipient entity.

Similarly, the tax is required to be deducted under section 194R of the Act if the benefit or perquisite is provided to a doctor who is working as a consultant in the hospital. In this case the benefit or perquisite provider may deduct tax under section 194R of the Act with hospital as recipient and then hospital may

again deduct tax under section 194R of the Act for providing the same benefit or perquisite to the consultant. To remove difficulty, as an alternative, the original benefit or perquisite provider may directly deduct tax under section 194R of the Act in the case of the consultant as a recipient.

The provision of section 194R of the Act shall not apply if the benefit or perquisite is being provided to a Government entity, like Government hospital, not carrying on business or profession.

Question 5. How is the valuation of benefit/perquisite required to be carried out?

Answer: The valuation would be based on fair market value of the benefit or perquisite except in following cases:-

(i) The benefit/perquisite provider has purchased the benefit/perquisite before providing it to the recipient. In that case the purchase price shall be the value for such benefit/perquisite.

(ii) The benefit/perquisite provider manufactures such items given as benefit/perquisite, then the price that it charges to its customers for such items shall be the value for such benefit/perquisite.

It is further clarified that GST will not be included for the purposes of valuation of benefit/perquisite for TDS under section 194R of the Act.

Question 6: 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?

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

Question 7: Whether reimbursement of out of pocket expense incurred by service provider in the course of rendering service is benefit/perquisite?

Answer: 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.

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.

Question 8: If there is a dealer conference to educate the dealers about the products of the company - Is it benefit/perquisite?

Answer: 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:

(i) new product being launched

(ii) discussion as to how the product is better than others

(iii) obtaining orders from dealers/customers

(iv) teaching sales techniques to dealers/customers

(v) addressing queries of the dealers/customers

(vi) reconciliation of accounts with dealers/customers

However, such conference must not be in the nature of incentives/benefits to select dealers/customers who have achieved particular targets.

Further, in the following cases the expenditure would be considered as benefit or perquisite for the purposes of section 194R of the Act:-

(i) Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer/business conference.

(ii) Expenditure incurred for family members accompanying the person attending dealer/business conference

(iii) Expenditure on participants of dealer/business conference for days which are on account of prior stay or overstay beyond the dates of such conference.

Question 9: 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?

Answer: The requirement of law is that if a person is providing benefit in kind to a recipient and tax is required to be deducted under section 194R of the Act, the person 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 along with challan number. This year Form 26Q has included provisions for reporting such transactions.

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 taking into account the fact the tax paid by him as TDS is also a benefit under section 194R of the Act. In the Form 26Q he will need to show it as tax deducted on benefit provided.

Question 10. Section 194R would come into effect from the 1st July 2022. Second proviso to sub-section (1) of section 194R of the Act provides that the provision of 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?

Answer: It is hereby clarified that,-

(i) Since the threshold of twenty thousand rupees is with respect to the financial year, 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.

(ii) The benefit or perquisite which has been provided on or before 30th June 2022, would not be subjected to tax deduction under section 194R of the Act.

16.06.2022

(Ankit Jain)
Under Secretary to the Govt. of India

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