

Changes in provisions relating to
TDS vide Finance Act, 2022:

Section 194R & 194IA of the Income Tax Act, 1961.

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01.

Section 194R

Deduction of tax on benefit or perquisite
in respect of business or profession.

Section 194R – Memorandum to the Finance Bill 2022

Page 51 – Para 4 [Clause 58 of the Finance Bill]

As per clause (iv) of section 28 of the Act, the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is to be charged as business income in the hands of the recipient of such benefit or perquisite.

However, in many cases, such recipient does not report the receipt of benefits in their return of income, leading to furnishing of incorrect particulars of income.

Section 194R – Applicability - w.e.f. 1st July, 2022

- 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.

Section 194R – Timeliness and Rate

- **Before** providing such benefit or perquisite, ensure that tax has been deducted
- @ 10% of the value or aggregate of value of such benefit or perquisite:

Section 194R – Threshold – Rs. 20,000

- 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 Rs. 20,000.

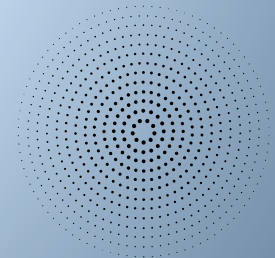
Section 194R – Implication where benefit fully in money

Supreme Court in case of Mahindra & Mahindra Ltd. [2018] 93 taxmann.com 32 (SC)

- Once the benefit itself is provided in the form of money - then provision is not attracted.
- In order to invoke the provisions of section 28(iv) of the Income Tax Act, the benefit which is received has to be in some other form rather than in the shape of money.

Section 194R – Payer exclusion

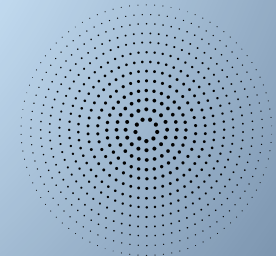
- A person, being an individual / HUF
- whose total sales, gross receipts or turnover does not exceed
- Rs. 1 crore in case of business or
- Rs. 50 lakhs in case of profession,
- during the financial year immediately preceding the financial year in which such benefit or perquisite, is provided by such person.



Section 194R – Person responsible

“Person responsible for providing” means

- A. In case of a company, the company itself including the principal officer thereof;
- B. In all other cases the person providing such benefit or perquisite.



Mumbai ITAT decision in case of David Dhawan [2005] 2 SOT 311 (Mumbai)/[2005] 92 TTJ 161 (Mumbai)

Assessee is film director of Hero No.1 movie. He travels along with his family to United Kingdom & Switzerland for shooting of the movie. Producer has borne the airfare of the director & family.

Hon'ble ITAT held that there is no benefit at all, but rather an inevitable fact of life of professions and services involving temporary relocations artists. No doubt when a person or his family members are proceeding on vacations, it has to be viewed as a perquisite but that cannot be situation when the person is travelling for performing the work and his family joins him at that place of temporary relocation. The assessee's services are creative in nature. In order to get optimum return for his money, the client producer has not only to ensure physical presence of the artists/cine professionals, like the assessee, but also a congenial environment to get the best out of his creative talent.

Hon'ble ITAT also emphasized that objective of the section 28(iv) is to tax benefits obtained as quid pro quo for the services rendered.

Section 194R (2) - Power of Board

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.

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.**



02.

Clarifications and Case Studies

Vide circular number 12/2022 dated
16th June, 2022.

Circular 12/2022 dated 16th June, 2022.

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?

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.

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

No. Tax under section 194R of the Act is required to be deducted whether the benefit or perquisite is in cash or 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?

No. 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.

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

No. To remove 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.

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

- In case the perquisite is purchased- Cash price
- In case it is manufactured- Price charged from other customers
- Other cases- Fair Market Value

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?

- In case the goods are returned- Not applicable
- In case goods are retained- Applicable.

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

- In case the invoice for expenditure is in the name of recipient of service- Not applicable.
- In case the invoice for expenditure is not in the name of recipient of service- Applicable.

Question 8: 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?

Recipient would pay tax in form of advance tax and provide the challan copy and a declaration stating the payment of TDS has been made.

Alternatively, the provider may pay advance tax in nature of payment against section 194R.

Question 9: If there is a dealer conference to educate the dealers about the products of the company - Is it benefit/perquisite?

- In case the conference is to educate customers/ dealers- Not applicable.
- In case it is for providing rewards in case of target completion- Applicable.

Question 10. Section 194R would come into effect from the 1st July 2022. Second proviso to subsection (I) 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?

- Calculation of threshold limit of Rs. 20,000- From 1st April, 2022.
- Applicability of section 194R and liability to deduct tax- From 1st July, 2022.

Open issues

1. Treatment of inter group transactions.
2. Treatment of Bad Debts.
3. Treatment in case of consumer facing industries
4. Inter play of other TDS sections 194H / 194C – Circular 720 dated 30th August 1995.
5. Assistance in meeting legal compliances of the dealers

Open issues

6. Extended Credit period (offered as a special case)

7. Insurance coverage for the dealer and his employees/families

8. Incentives in Cash or Kind given to any Director, Employee, Associate or Consultant of the Company by any Third Party, by virtue of the employment of such Director or Employee with the Company or by virtue of professional association of such Associate or Consultant with the Company.

Open issues

9. Display items provided free of cost (to ensure uniform customer experience across dealers)

10. Assistance in stabilizing the operations of the dealers (developing marketing plans, maintenance of inventories etc.)

03.

Section 194IA

Amendment in section 194IA.



Amendment in Section 194-IA to provide TDS on immovable property on stamp duty value w.e.f. 1st April, 2022.



Hitherto, tax at source @ 1% of the consideration is deductible if consideration paid for purchase of immovable property is Rs.50 lakhs or more.



Now the TDS shall be deducted @ 1% of the stamp duty value or consideration paid, whichever is higher.

04.

Case Study

Circumstances of application of Section 194IA.

Case Study



Mr. A wants to sell an immovable property to Mr. B.
Sale Value- Rs.49,00,000.
Stamp Duty Value (SDV)- Rs.52,00,000.



As per the previous provision, no TDS would have to be deducted as the sale consideration is <Rs. 50 Lakhs.



SDV > Sale consideration.
According to the amended provision,
TDS is to be deducted @1% of the SDV i.e., 1% of Rs.52,00,000 amounting to Rs. 52,000.

THANKS!

Do you have any questions?

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