



Analysis of TDS on Benefits or Perquisites u/s 194R (Applicable from 1 July 2022)

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Overview

In Finance Act 2022, various amendments have been enacted in TDS provisions. The most significant amendment is made by inserting a new Section which mandate to deduct TDS on Benefits or Perquisites provided during the course of business or profession u/s 194R. It will be a challenging compliance for deductor to comply with above section. TDS on benefit and perquisite will be burdensome and cumbersome.

Although the above section shall not be applicable on Individual or HUF having turnover less than prescribed limit or if value of benefit or perquisite provided to a person is less than INR 20,000. Even it is a tedious task to keep track of TDS applicability on benefit and perquisite.

In this write up we have discussed about the provisions and procedural aspects of the above provisions of TDS which will give you insight about these provisions of TDS on benefit and perquisite.

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Who will deduct TDS

Every person, responsible for providing any benefit or perquisite, arising from business or profession, shall deduct TDS on value of such benefit or perquisite.

However in following conditions, TDS is not required to be deducted:

- ☐ If aggregate value of benefits or perquisites provided to a person during a financial year is less INR 20,000.
- ☐ If provider is an individual or HUF, whose total sales, gross receipts or turnover does not exceed INR one crore in case of business or fifty lakh in case of profession, during the financial year immediately preceding the financial year in which such benefit or perquisite is provided to such person.
- ☐ If benefit of perquisite is not arising out of business or profession of recipient.

Points to Note

1. Benefit or perquisites may be in cash or in kind. It may be convertible into money or not.
2. Where the benefit or perquisite, 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 TDS on such benefit or perquisite, the provider of 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.

Whose TDS will be deducted

TDS of recipient of the benefit or perquisite shall be deducted by the person responsible for providing such benefit or perquisite. Thus, it includes all persons whether individual, HUF, Company, Firm etc.

However in case of following recipient, section shall not be applicable and hence TDS not required to be deducted.

- ☐ Non resident person. i.e. if recipient is non resident no TDS is required to be deducted under this section.
- ☐ If recipient has already paid the tax on value of such benefit or perquisite
- ☐ If recipient of benefit or perquisite is employee of provider, TDS is not applicable u/s 194R but TDS u/s 192 is required to be deducted.

Time and Rate of TDS

TDS under section 194R shall be deducted before providing / releasing such benefit or perquisite. Thus, liability of deduction of TDS under this section shall arise on or before providing / releasing such benefit.

Rate at which TDS shall be deducted is categorize below:

Applicable Section	Rate of TDS
If PAN / Aadhar of seller is available (Section 194R)	10%
If PAN / Aadhar of Seller not available. (Section 206AA)	20%
If ITR for immediately preceding FY not filed by recipient (Section 206AB) *	20%

* Section 206AB is applicable if ITR for immediately preceding previous year, for which time limit for furnishing ITR u/s 139(1) has expired, has not been filed and the aggregate of TDS and TCS in his case is INR fifty thousand or more in the said previous year.

Value on which TDS to be deducted

- ◇ TDS is to be deducted at prescribed rate on aggregate value of such benefit or perquisite. Vide circular no. 12/2022 dated 16-6-2022 CBDT has clarified that valuation would be based on fair market value of the benefit or perquisite

However in the following cases, value may be different from market value : –

- I. In case the provider has purchased the benefit/perquisite before providing it to the recipient, purchase price shall be the value of such benefit/perquisite.
- II. In case the provider manufactures such items given as benefit/perquisite, then the price its charged from 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.

Transitional and procedural aspects

For calculating the limit of ₹ 20,000, value of benefits given before 01-07-2022 shall be considered?

For calculating the limit of ₹ 20,000, the value of benefits or perquisites provided During 01-04-2022 to 30-06-2022 shall be taken into consideration as limit of 20,000 is for a financial year. However, since this section is applicable w.e.f 01-07-2022, TDS under this section is required to be deducted on the benefit or perquisites provided on or after 01-07-2022.

If Benefit / perquisite provided is in kind, how provider shall ensure that tax in respect of benefit / perquisite has been paid.

Declaration may be obtained from the recipient in this regard, along with the copy of advance tax challan, declaring that tax required to be deducted on the same has been paid. This would be then required to be reported in TDS return along with challan number.

TDS on benefit / perquisite even if the amount is not taxable in the hand of recipient

The deductor is not required to check whether the amount of benefit or perquisite that he is providing is taxable in the hands of the recipient 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.

Transitional and procedural aspects

Whether sales discount, cash discount and rebates are benefit or perquisite

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. However if any benefit is given in cash or in kind in connection as an incentive on sale or discount on sale, TDS shall be applicable u/s 194R.

Whether reimbursement of out of pocket expense is a benefit/perquisite?

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 other person in the course of business/profession and hence TDS is to be deducted u/s 194R. However, if the invoices of expenditure are in the name of party who is reimbursing the same, it shall not be treated as benefit or perquisite under section 194R.

Transitional and procedural aspects

Is dealer/ business conference to be considered as benefit / perquisite?

The expenditure pertaining to dealer/business conference would not be considered as benefit/perquisite where dealer/business conference is held with the prime object to educate dealers/customers about :

(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

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.

Transitional and procedural aspects

Does TDS under section 194R shall be applicable on benefits or perquisites given to individuals not carrying any business or profession ?

Section 194R is applicable only on benefits or perquisites arising from business or profession. Thus, TDS u/s 194R shall not be applicable on Benefit given to any person who is not carrying on any business or profession.

However, benefits/perquisites may be given and used by owner/director/employee of the recipient entity or their relatives who in their individual capacity may not be carrying on business or profession. In this case, tax is required to be deducted by the provider 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. The recipient entity may subsequently treat this benefit/perquisite as the perquisite given to its director /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.

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.

THANKS!



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