Treatise on Section 194-R under Income-tax Act, 1961

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Direct Taxes Committee
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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First Edition	:	February, 2023
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Website	:	www.icai.org
Published by	:	Direct Taxes Committee on behalf of the Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi - 110 002.

Foreword

The Direct Taxes Committee (DTC) of the Institute of Chartered Accountants of India (ICAI) is one of the important Committees of the ICAI which is engaged in the matters related to direct taxes and makes representations to the Government, Central Board of Direct Taxes and at other appropriate forums from time to time on various legislative amendments and issues concerning direct taxes. One of the main activities of the Committee is to disseminate knowledge and honing skills of the membership in the area of direct taxation.

The Law of TDS has been there for quite sometime. As per this concept, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government.

The government has specified the new TDS section 194R in the Income-tax Act in the Budget 2022-23. For bringing out clarity on this section the Direct Taxes Committee of ICAI has come out with the publication **"Treatise on Section 194-R under Income-tax Act, 1961"** to assist the members in understanding and providing basic idea on the above subject and other related valuable information.

I appreciate the efforts of CA. Chandrashekhar V. Chitale, Chairman, Direct Taxes Committee, CA. Raj Chawla, Vice-Chairman, Direct Taxes Committee and all other members of the Committee for taking active steps in providing regular guidance to the members and other stakeholders at large.

I am sure that the members will find this treatise of immense use in discharging their responsibilities in an efficient and effective manner.

Date: 06.02.2023 **CA. (Dr.) Debashis Mitra**

Place: New Delhi President, ICAI

Preface

The concept of Tax deduction at Source (TDS) was introduced as an anti-avoidance measure. TDS indicates receipt of income by a person and amount thereof. During the course of time TDS collections increased to a considerable magnitude with the expansion of the field. As per this concept, a person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government. The deductee from whose income tax has been deducted at source would be entitled to get credit of the amount so deducted on the basis of Form 26AS or TDS certificate issued by the deductor.

Finance Act 2022, has inserted a new section 194R in the Income-tax Act, 1961. This new provision of TDS requires a person, who is responsible for providing any benefit or perquisite to a resident, to deduct tax at source. Rate of TDS is 10 % of the value or aggregate of value of such benefit or perquisite before providing such benefit or perquisite.

The law being of latest origin, requires some elucidation for the professionals. To provide quick guidance on this matter to the members, this publication would prove to be very useful. We hope, it would enable the members to better comprehend the new provision.

The Direct Taxes Committee, in this backdrop thought it fit to bring out this brief publication namely **"Treatise on Section 194R under the Income Tac Act,1961)"** as a handy tool to assist the fraternity to make proper compliance of the provisions and procedures in more objective manner

We are sincerely thankful to CA. (Dr.) Debashis Mitra, President, ICAI and CA. Aniket Sunil Talati, Vice-President, ICAI for being guiding force behind all initiatives being taken by the Committee.

We are extremely thankful and appreciate the efforts of our CA Pankaj Soni, CA Ramesh N Thete, and CA Shubham Rathi who provided valuable inputs for this publication. We are pleased to place on record our sincere gratitude for the involvements and contributions by all the Committee members and our dear Council Colleagues of ICAI. We are sure that this effort of DTC of

ICAI would go a long way in assisting our members in making utmost compliance of the provisions.

CA. Raj Chawla
Vice-Chairman,
Direct Taxes Committee, ICAI

CA. Chandrashekhar V. Chitale
Chairman,
Direct Taxes Committee, ICAI

Date: 06.02.2023

Place: New Delhi

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What is TDS

For quick and efficient collection of taxes, the Income-tax Act has incorporated a system of deduction of tax at the point of generation of income. This system is called “Tax Deducted at Source” commonly known as TDS. Under this system, tax is deducted at the point of origination of income. Tax is deducted by the payer and the same is directly remitted to the Government by the payer on behalf of the payee.

The provisions of tax deducted at source presently apply to several payments like salary, interest, commission, brokerage, professional fees, royalty, etc.

Who is deductor and a deductee?

In case of certain prescribed payments (e. g. Interest, commission, brokerage, rent etc.) the person making the payment is required to deduct tax at source (TDS) at the prescribed rate. The payer is known as deductor and the payee, who receives the net payment is called the deductee.

Why Section 194R?

As we know, business houses often (either per the terms of a contract or voluntarily) offer benefits or perquisites to employees, business partners, channel partners, distributors etc. They claim expenses of the cost/value of benefits or perquisites so offered under section 37 of the Income Tax Act, 1961. The benefits so offered are taxable in the hands of the recipients, but there was no check on these kind of transactions i.e. these transaction though taxable were out of government records, and hence the section 194R is brought in statute books to cause reporting of such transactions. Now with the help of the section 194R the recipients will be reported and the government can recover taxes, wherever applicable.

For example doctors receives free samples, travel tickets from various pharma companies. The tickets so distributed are the cost of the Pharma companies as they are business promotion costs and are claimed by companies under section 37 of Income Tax Act, 1961 as the same are in

relation to the business. On the other hand the benefits/free tickets received by doctors are chargeable to tax under section 28 i.e. as business income.

In the above example, we can note that, the cost of the benefits/perquisite is charged/claimed by the company thus resulting in tax savings to the same, however, this cannot be checked whether the doctors have offered the same as income as there was no tax deduction and reporting by the companies (it will be reflected in 26AS statement/AIS henceforth). The underlying idea was to get these benefits/perquisites reported and promote tax collections from the recipients of the perquisite/benefits.

Feature of section 194R – Deduction of tax on the benefit or perquisite in respect of business or profession

Finance Act 2022 inserted a new section 194R in the Income-tax Act, 1961 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 @ I0% 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.

Deductee/ Receiver of Benefit or Perquisite

As per sub section (1) of section 194R 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:

To comply the above requirement deductor 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.

Specified Benefit or Perquisite

As per clause (iv) of section 28 of Income-tax Act. 1961 the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;

However, 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.

Valuation of Benefit or Perquisite

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

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.

Applicability of section 194R- When the benefit or perquisite is in the form of capital asset?

The benefit or perquisite received by a recipient in the form of capital asset is also covered under the purview of this Section. 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 is accordingly taxable. 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.

Non applicability of Section 194R – How s limit of twenty thousand is to be computed for the Financial Year 2022-23?

As per second proviso of section 194R 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:

Further, 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.

However, 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.

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 I" 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.

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' A' 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 (20 15) 53 taxmann.com 277 (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)

Applicability of section 194R- To Principal Amount of Loan Paid?

- 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 Raman iyam Homes (P) Ltd (2016) 68 taxmann.com 289 (Mad)
- 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)

Applicability of section 194R on Benefit/ Perquisite provided to Director of a Company

- 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 (Born)

- Value of rent free accommodation, furniture and fixtures given to director was held as taxable under section 28(iv). CIT v Subrata Roy (2016) 3851TR 547 (All)

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.

Whether sales discount, cash discount, rebates and interest free loans are benefit or perquisite?

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. Therefor to remove such difficulty Government has 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.

Applicability of section 194R on free medicine sample provided by company to doctor who is an employee of 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 (I) 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 4 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.

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

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 I 94R 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.

Section 194R Vis a Vis Circular

The Central Board of Direct Taxes ['the CBDT'] has come up with a Circular No. 12 of 2022 bearing Folio No. 370142/27/2022 – TPL, dated 16.06.2022, containing clarificatory guidelines in the form of question answers. On perusal of Guidelines, it appears that in guise of the Circular, the CBDT has extended the scope of the section 194R which is patently not tenable in the eyes of law. Few of the answers to the questions in guidelines which appears to have been extended the scope are as follows:

1. Of the Circular is that whether it is necessary that person providing benefit needs to check if the amount is taxable u/s 28(iv) of the Act, before deducting TDS u/s 194R of the Act?

While answering in Circular, it is stated that the deductor is not required to check the taxability of benefit in the hands of the recipient u/s 28(iv) as the same may be taxable under other sections like section 41(1) etc.

In this regard it is apposite to refer to the Memorandum explaining the Finance Bill, 2022, to check the legislative intent behind introducing the section 194R. On perusal of the Memorandum it appears that the purpose of the introduction of section 194R was that the benefit or perquisite whether convertible into money or not, arising from business or exercise of profession is taxable u/s 28(iv) and in many cases such recipient does not report the receipt of benefits in their return of income. It means, to get the reporting and have check on such assessee, the section 194R is introduced.

The section 194R is brought in to statute book to have the check on the only recipient in whose case section 28(iv) attracts. Therefore, the answer to Q1 of Circular wherein it is stated that, no need to check the

taxability of benefit or perquisite u/s 28(iv) as it may be taxed under any other section, appears to have been gone beyond the scope of the provision of section 194R and therefore is to that extent illegal.

2. Of the Circular is that whether it is necessary that the benefit or perquisite must be in kind for section 194R of the Act to operate?

As per Circular, TDS u/s 194R is required to be deducted whether the benefit or perquisite is in cash or kind. For drawing this conclusion, reliance is placed in Circular on the First proviso of section 194R (1) of the Act.

Sub – section (1) of section 194R of the Act is reproduced as follows:

(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:'

(Emphasis supplied)

The phrase 'any benefit or perquisite, whether convertible into money or not' is also used in the section 2(24)(iv) and section 28(iv) of the Act. Meaning of the phrase is settled down by the Hon'ble Apex Court in case of **CIT v. Mahindra and Mahindra Ltd. – [(2018) 404 ITR 1 (SC)]**. As per the Supreme Court the phrase shall include only the benefits or perquisites which are not in the form of money**.** In other words the perquisite or benefit received in kind shall only be part of the aforesaid phrase and not the benefit and perquisite received in monetary consideration. Therefore, sub section (1) of section 194R attracts benefit and perquisite received in cash.

Now let us analyse the answer of the CBDT. Whether proviso can override the main provision of the section?

The Hon'ble Supreme Court in case of **Mavilayi Service Co-operative Bank Ltd. v. CIT – [(2021) 431 ITR 1 (SC)]** by placing reliance on various rulings has held that proviso cannot travel beyond the scope of main provision of section.

Similarly, if section 194R(1) covers only benefit or perquisite in kind then the proviso to section cannot extend its scope to benefits or perquisites in cash.

3. Of the circular deals with the reimbursement of the expenses, whether it will attract the provision section 194R.

On perusal of the answer in Circular, it appears that in the opinion of the CBDT if the invoice of reimbursable expense is not in the name of payer but payment is made by the payer directly or reimbursed to the payee, in such a case provision of section 194R attracts.

Whereas in the authors opinion, if the reimbursement of expenditure is without markup then there is no question arises of any benefit or perquisite arising to the payee from such reimbursement. Therefore, there is no question of TDS irrespective of the fact that the invoice is obtained in whose name and whether payment is made directly or reimbursed. Reliance in this regard is placed on the judgement of Hon'ble Supreme Court in case of **DIT (IT) v. A.P. Moller Maersk – [(2017) 392 ITR 186 (SC)]**

In the authors opinion the constitutional validity of the Circular needs to be checked.

Appendices

Appendix 1: Relevant Section of Income Tax Act. 1961

194R. (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.

Appendix 2: Relevant Rules of Income- tax Act. 1962

30. (1) All sums deducted in accordance with the provisions of Chapter XVII-B by an office of the Government shall be paid to the credit of the Central Government—

(*a*) on the same day where the tax is paid without production of an income-tax challan; and

(*b*) on or before seven days from the end of the month in which the deduction is made or income-tax is due under sub-section (1A) of section 192, where tax is paid accompanied by an income-tax challan.

(2) All sums deducted in accordance with the provisions of Chapter XVII-B by deductors other than an office of the Government shall be paid to the credit of the Central Government—

(*a*) on or before 30th day of April where the income or amount is credited or paid in the month of March; and

(*b*) in any other case, on or before seven days from the end of the month in which—

(*i*) the deduction is made; or

(*ii*) income-tax is due under sub-section (1A) of section 192.

[*(2A) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), any sum deducted under section 194-IA shall be paid to the credit of the Central Government within a period of* ***[****thirty days****]*** *from the end of the month in which the deduction is made and shall be accompanied by a challan*-cum-*statement in Form No. 26QB.***]**

[*(2B) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), any sum deducted under section 194-IB shall be paid to the credit of the Central Government within a period of thirty days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QC.***]**

[*(2C) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), any sum deducted under section 194M shall be paid to the credit of the Central Government within a period of thirty days from the end of the month in which*

*the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QD.***]**

[*(2D) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), any sum deducted under section 194S by a specified person referred to in that section shall be paid to the credit of the Central Government within a period of thirty days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QE*.**]**

(3) Notwithstanding anything contained in sub-rule (2), in special cases, the Assessing Officer may, with the prior approval of the Joint Commissioner, permit quarterly payment of the tax deducted under section 192 or section 194A or section 194D or section 194H for the quarters of the financial year specified to in column (2) of the Table below by the date referred to in column (3) of the said Table:—

Sl. No.	*Quarter of the financial year ended on*	*Date for quarterly payment*
(1)	*(2)*	*(3)*
1.	30th June	7th July
2.	30th September	7th October
3.	31st December	7th January
4.	31st March	30th April

TABLE

B. Mode of payment

(4) In the case of an office of the Government, where tax has been paid to the credit of the Central Government without the production of a challan, the Pay and Accounts Officer or the Treasury Officer or the Cheque Drawing and Disbursing Officer or any other person by whatever name called to whom the deductor reports the tax so deducted and who is responsible for crediting such sum to the credit of the Central Government, **[***shall submit a statement in Form No.24G to the agency authorised by the Principal Director of Income-tax (Systems) in respect of tax deducted by the deductors and reported to him*.**]**

[*(4A) Statement referred to in sub-rule (4) shall be furnished—*

(a) on or before the 30th day of April where the statement relates to the month of March; and

(b) in any other case, on or before 15 days from the end of relevant month.

(4B) Statement referred to in sub-rule (4) shall be furnished in the following manner, namely:—

(a) electronically under digital signature in accordance with the procedures, formats and standards specified under sub-rule (5); or

(b) electronically along with the verification of the statement in Form 27A or verified through an electronic process in accordance with the procedures, formats and standards specified under sub-rule (5).

(4C) The persons referred to in sub-rule (4) shall intimate the number (hereinafter referred to as the Book Identification Number) generated by the agency to each of the deductors in respect of whom the sum deducted has been credited.**]**

[*(5) The Principal Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the statements and shall be responsible for the day-to-day administration in relation to furnishing of the information and verification of the statements*.**]**.

(6)(*i*) Where tax has been deposited accompanied by an income-tax challan, the amount of tax so deducted or collected shall be deposited to the credit of the Central Government by remitting it within the time specified in clause (*b*) of sub-rule (1) or in sub-rule (2) or in sub-rule (3) into any branch of the Reserve Bank of India or of the State Bank of India or of any authorised bank.

(*ii*) Where tax is to be deposited in accordance with clause (*i*), by persons referred to in sub-rule (1) of rule 125, the amount deducted shall be electronically remitted into the Reserve Bank of India or the State Bank of India or any authorised bank accompanied by an electronic income-tax challan.

[*(6A) Where tax deducted is to be deposited accompanied by a challan-*cum-*statement in Form No. 26QB, the amount of tax so deducted shall be*

deposited to the credit of the Central Government by remitting it electronically within the time specified in sub-rule (2A) into the Reserve Bank of India or the State Bank of India or any authorised bank.]

[*(6B) Where tax deducted is to be deposited accompanied by a challan-cum-statement in Form No.26QC, the amount of tax so deducted shall be deposited to the credit of the Central Government by remitting it electronically within the time specified in sub-rule (2B) into the Reserve Bank of India or the State Bank of India or any authorized bank*.]

[*(6C) Where tax deducted is to be deposited accompanied by a challan-cum-statement in Form No.26QD, the amount of tax so deducted shall be deposited to the credit of the Central Government by remitting it electronically within the time specified in sub-rule (2C) into the Reserve Bank of India or the State Bank of India or any authorised bank.*]

[*(6D) Where tax deducted is to be deposited accompanied by a challan-cum-statement in Form No.26QE, the amount of tax so deducted shall be deposited to the credit of the Central Government by remitting it electronically within the time specified in sub-rule (2D) into the Reserve Bank of India or the State Bank of India or any authorised bank*.]

(7) For the purpose of this rule, the amount shall be construed as electronically remitted to the Reserve Bank of India or to the State Bank of India or to any authorised bank, if the amount is remitted by way of—

(*a*) internet banking facility of the Reserve Bank of India or of the State Bank of India or of any authorised bank; or

(*b*) debit card.

[*(7A) The Director General of Income-tax (Systems) shall specify the procedure, formats and standards for the purposes of remitting the amount electronically to the Reserve Bank of India or the State Bank of India or any authorised bank and shall be responsible for the day-to-day administration in relation to the remitting of the amount electronically in the manner so specified.*]

(8) Where tax is deducted before the 1st day of April, 2010, the provisions of this rule shall apply as they stood immediately before their substitution by the Income-tax (Sixth Amendment) Rules, 2010.

1A. (1) Every person responsible for deduction of tax under Chapter XVII-B, shall, in accordance with the provisions of sub-section (3) of section 200, deliver, or cause to be delivered, the following quarterly statements to the Director General of Income-tax (Systems) or the person authorised by the Director General of Income-tax (Systems), namely:—

(*a*) Statement of deduction of tax under section 192 [1]**[***and section 194P***]** in Form No. 24Q;

(*b*) Statement of deduction of tax under sections 193 to 196D [1]**[***(other than section 194P)***]** in—

(*i*) Form No. 27Q in respect of the deductee who is a non-resident not being a company or a foreign company or resident but not ordinarily resident; and

(*ii*) Form No. 26Q in respect of all other deductees:

[**Provided** *that where the* **[***Exchange***]** *has, in accordance with the guidelines issued under sub-section (6) of section 194S, agreed to pay tax in relation to a transaction of transfer of a virtual digital asset, owned by it as an alternative to tax required to be deducted by the buyer of such asset under section 194S, the Exchange shall deliver or cause to be delivered, a quarterly statement of such transactions in Form No. 26QF to the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) or the person authorised by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems).*

Explanation: *For the purposes of this sub-rule,—*

*(*i*)* *"Exchange" means a person that operates an application or platform for* **[***transfer***]** *of virtual digital assets, which matches buy and sell trades and execute the same on their application or platform;*

*(*ii*)* *"virtual digital asset" shall have same meaning as assigned to it in clause (47A) of section 2.*]

[*(2) Statements referred to in sub-rule (1) for the quarter of the financial year ending with the date specified in column (2) of the Table below shall be furnished by the due date specified in the corresponding entry in column (3) of the said Table:*

Sl. No.	*Date of ending of quarter of financial year*	*Due date*
(1)	*(2)*	*(3)*
1.	*30th June*	*31st July of the financial year*
2.	*30th September*	*31st October of the financial year*
3.	*31st December*	*31st January of the financial year*
4.	*31st March*	*31st May of the financial year immediately following the financial year in which the deduction is made***]**

Table

(3) (*i*) The statements referred to in sub-rule (1) may be furnished in any of the following manners, namely:—

(*a*) furnishing the statement in paper form;

[*(*b*) furnishing the statement electronically under digital signature in accordance with the procedures, formats and standards specified under sub-rule (5);*

*(*c*) furnishing the statement electronically along with the verification of the statement in Form 27A or verified through an electronic process in accordance with the procedures, formats and standards specified under sub-rule (5).***]**

(*ii*) Where,—

(*a*) the deductor is an office of the Government; or

(*b*) the deductor is the principal officer of a company; or

(*c*) the deductor is a person who is required to get his accounts audited under section 44AB in the immediately preceding financial year; or

(*d*) the number of deductee's records in a statement for any quarter of the financial year are twenty or more,

the deductor shall furnish the statement in the manner specified in **[***item (*b*) or item (*c*) of clause (i)***]**.

(*iii*) Where deductor is a person other than the person referred to in clause (*ii*), the statements referred to in sub-rule (1) may, at his option, be delivered or cause to be delivered in the manner specified in **[***item (*b*) or item (*c*) of clause (i)***]**.

[*(3A) A claim for refund, for sum paid to the credit of the Central Government under Chapter XVII-B, shall be furnished by the deductor in Form 26B electronically under digital signature* **[***or verified through an electronic process***]** *in accordance with the procedures, formats and standards specified under sub-rule (5).***]**

[*(3B) Specified bank responsible for deduction of tax under section 194P shall furnish evidence produced by the specified senior citizen for claiming deduction under chapter VI-A to the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) or to any other person authorised by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as and when required.***]**

(4) The deductor at the time of preparing statements of tax deducted shall,—

(*i*) quote his tax deduction and collection account number (TAN) in the statement;

(*ii*) quote his permanent account number (PAN) in the statement except in the case where the deductor is an office of the Government;

(*iii*) quote the permanent account number of all deductees;

(*iv*) furnish particulars of the tax paid to the Central Government including book identification number or challan identification number, as the case may be;

[(*v*) furnish particulars of amount paid or credited on which tax was not deducted in view of the issue of certificate of no deduction of tax under section 197 by the Assessing Officer of the payee;

(*vi*) furnish particulars of amount paid or credited on which tax was not deducted in view of the compliance of provisions of sub-section (6) of section 194C by the payee;]

[(*vii*) furnish particulars of amount paid or credited on which tax was not deducted in view of the furnishing of declaration under sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A by the payee;]

[*(viii) furnish particulars of amount paid or credited on which tax was not deducted* [1aa]**[***or deducted at lower rate***]** *in view of the notification issued under sub-section (1F) of section 197A.***]**

[*(ix) furnish particulars of amount paid or credited on which tax was not deducted or deducted at lower rate in view of the notification issued under second proviso to section 194N or in view of the exemption provided in third proviso to section 194N or in view of the notification issued under fourth proviso to section 194N.***]**

[*(x) furnish particulars of amount paid or credited on which tax was not deducted or deducted at lower rate in view of the notification issued under sub-section (5) of section 194A or in view of exemption provided under clause (x) of sub-section (3) of section 194A.***]**

(xi) furnish particulars of amount paid or credited on which tax was not deducted under sub-section (2A) of section 194LBA.

(xii) furnish particulars of amount paid or credited on which tax was not deducted in view of clause (a) or clause (b) of sub-section (1D) of section 197A.

*(xiii) furnish particulars of amount paid or credited on which tax was not deducted in view of the exemption provided to persons referred to in Board Circular No. 3 of 2002 dated 28th June 2002 or Board Circular No. 11 of 2002 dated 22nd November 2002 or Board Circular No. 18 of 2017 dated 29th May 2017.***]**

[*(xiv) furnish particulars of amount paid or credited on which tax was not deducted in view of clause (d) of the second proviso to section 194 or in view of the notification issued under clause (e) of the second proviso to section 194;*

(xv) furnish particular of amount paid or credited on which tax was not deducted in view of proviso to sub-section (1A) or in view of sub-section (2) of section 196D.;

*(xvi) furnish particulars of amount paid or credited on which tax was not deducted in view of sub-section (5) of section 194Q with effect from 1st day of July, 2021.***]**

[*(xvii) furnish particulars of amount deposited being prerequisite for releasing—*

(a) *winnings in terms of proviso to section 194B;*

(b) *benefit or perquisite in terms of first proviso to sub-section (1) of section 194R; and*

(c) *consideration in terms of proviso to sub-section (1) of section 194S along with the challan details such as BSR code of the bank, date of payment and challan serial number*.**]**

[(4A) Notwithstanding anything contained in sub-rule (1) or sub-rule (2) or sub-rule (3) or sub-rule (4), every person responsible for deduction of tax under section 194-IA shall furnish to the Director General of Income-tax (System) or the person authorised by the Director General of Income-tax (System) a challan-cum-statement in Form No. 26QB electronically in accordance with the procedures, formats and standards specified under sub-rule (5) within **[***thirty days***]** from the end of the month in which the deduction is made.**]**

[(4B) Notwithstanding anything contained in sub-rule (1) or sub-rule (2) or sub-rule (3) or sub-rule (4), every person responsible for deduction of tax under section 194-IB shall furnish to the Principal Director General of Income-tax (Systems) or Director General of Income-tax (System) or the person authorised by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) a challan-cum-statement in Form No.26QC electronically in accordance with the procedures, formats and standards specified under sub-rule (5) within thirty days from the end of the month in which the deduction is made.**]**

[*(4C) Notwithstanding anything contained in sub-rule (1) or sub-rule (2) or sub-rule (3) or sub-rule (4), every person responsible for deduction of tax under section 194M shall furnish to the Principal Director General of Income-tax (Systems) or Director General of Income-tax (System) or the person authorised by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) a challan-cum-statement in Form No.26QD electronically in accordance with the procedures, formats and standards specified under sub-rule (5) within thirty days from the end of the month in which the deduction is made.***]**

[*(4D) Notwithstanding anything contained in sub-rule (1) or sub-rule (2) or sub-rule (3) of sub-rule (4), every specified person referred to in section 194S and responsible for deduction of tax under that section shall furnish to the Principal Director General of Income-tax (Systems) or Director General of*

Income-tax (Systems) or the person authorised by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), a challan-cum-statement in Form No. 26QE electronically in accordance with the procedures, formats and standards specified under sub-rule (5) within thirty days from the end of the month in which the deduction is made.**]**

[*(4E) The Exchange referred to in sub-rule (1) shall, at the time of preparing the quarterly statement in Form No. 26QF, furnish particulars of amount paid or credited on which tax was not deducted in accordance***]** *with guidelines issued under sub-section (6) of section 194S*.]

[(5) The Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the statements or claim for refund in Form 26B and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements or claim for refund in Form 26B in the manner so specified.**]**

(6) Where a statement of tax deducted at source is to be furnished for tax deducted before the 1st day of April, 2010, the provisions of this rule and rule 37A shall apply as they stood immediately before their substitution or omission by the Income-tax (Sixth Amendment) Rules, 2010.

31ACB. *(1) The certificate from an accountant under the first proviso to sub-section (1) of section 201 shall be furnished in Form 26A to the Director General of Income-tax (Systems) or the person authorised by the Director General of Income-tax (Systems) in accordance with the procedures, formats and standards specified under sub-rule (2), and verified in accordance with the procedures, formats and standards specified under sub-rule (2).*

(2) The Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the Form 26A and be responsible for the day-to-day administration in relation to furnishing and verification of the Form 26A in the manner so specified.

37BA. (1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information

relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.

(2) [(*i*) Where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee :

Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).]

(*ii*) The declaration filed by the deductee under clause (*i*) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.

(*iii*) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody.

(3) (*i*) Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.

(*ii*) Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

[*(3A) Notwithstanding anything contained in sub-rule (1), sub-rule (2) or sub-rule (3), for the purposes of section 194N, credit for tax deducted at source shall be given to the person from whose account tax is deducted and paid to the Central Government account for the assessment year relevant to the previous year in which such tax deduction is made.* **]**

(4) Credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of—

(*i*) the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority; and

(*ii*) the information in the return of income in respect of the claim for the credit,

subject to verification in accordance with the risk management strategy formulated by the Board from time to time.]

114-I. *(1) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or any person authorised by him shall, under section 285BB of the Income-tax Act, 1961, upload in the registered account of the assessee an annual information statement in Form No. 26AS containing the information specified in column (2) of the table below, which is in his possession within three months from the end of the month in which the information is received by him:—*

Sl. No.	*Nature of information*
(1)	***(2)***
(i)	*Information relating to tax deducted or collected at source*
(ii)	*Information relating to specified financial transaction*
(iii)	*Information relating to payment of taxes*
(iv)	*Information relating to demand and refund*
(v)	*Information relating to pending proceedings*
(vi)	*Information relating to completed proceedings*

TABLE

(2) The Board may also authorise the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or any person authorised by him to upload the information received from any officer, authority or body performing any function under any law or the information received under an agreement referred to in section 90 or section 90A of the Income-tax Act, 1961 or the information received from any other person to the extent as it may deem fit in the interest of the revenue in the annual information statement referred to in sub-rule (1).

(3) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of uploading of annual information statement referred to in sub-rule (1).

Appendix 3: Guideline for removal of difficulty under Sub section 2 of Section 194R

GUIDELINES FOR REMOVAL OF DIFFICULTIES UNDER SUB-SECTION (2) OF SECTION 194R OF THE INCOME-TAX ACT, 1961 CIRCULAR NO. 12/2022 [F. NO. 370142/27/2022-TPL], DATED 16-6-2022

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 re/easing 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] 385 ITR 547 (All.)

Where a car was given lo 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 or 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.

ADDITIONAL GUIDELINES FOR REMOVAL OF DIFFICULTIES UNDER SUB-SECTION (2) OF SECTION 194R OF THE INCOME-TAX ACT, 1961 CIRCULAR NO. 18/2022 [F.NO. 370142/27/2022-TPL], DATED 13-9-2022

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.

2. 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.

3. 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.

4. 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.

5. 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.

6. Accordingly, in exercise of the power conferred by sub-section (2) of section 194R of the Act, CBDT had issued guidelines in the form of the Circular no. 12 of 2022, dated 16th June, 2022. Subsequently, some more clarifications are requested by stakeholders on various issues. Accordingly, this Circular is also issued under sub-section (2) of section 194R to provide clarification on issues which will help to remove difficulties in implementation of this provision.

7. It is clarified that this Circular is only for removing difficulties in implementation of provisions of section 194R of the Act and it does not

impact the taxability of income in the hands of the recipient which shall be governed by the relevant provisions of the Act.

Guidelines

Question 1: Refer question No. 3 of the Circular No. 12 of 2022. If loan settlement/waiver by a bank is to be treated as benefit/perquisite, it would lead to hardship as the bank would need to incur the additional cost of tax deduction in addition to the haircut that he has taken. Will section 194R of the Act apply in such a situation?

Answer: It is true that waiver or settlement of loan by the bank may be an income to the person who had taken the loan. It is also true that subjecting such a transaction to tax deduction under section 194R of the Act would put extra cost on such bank, as this would require payment of tax by the deductor in addition to him taking a haircut already. Hence, to remove difficulty, it is clarified that one-time loan settlement with borrowers or waiver of loan granted on reaching settlement with the borrowers by the following would not be subjected to tax deduction at source under section 194R of the Act:

(*i*) Public Financial Institution as defined in clause (72) of section 2 of the Companies Act 2013;

(*ii*) Scheduled Bank as defined in clause (*ii*) of the Explanation to clause (*viia*) of sub-section (1) of section 36 of the Act;

(*iii*) Cooperative bank (other than a primary agricultural credit society) as defined in the Explanation to sub-section (4) of section 80P of the Act;

(*iv*) Primary co-operative Agricultural and Rural Development Bank as defined in the Explanation to sub-section (4) of section 80P of the Act;

(*v*) State Financial Corporation being a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporation Act, 1951;

(*vi*) State Industrial Investment Corporation being a Government company within the meaning of sub-section (45) of section 2 of the Companies Act, 2013, engaged in the business of providing long-term finance for industrial projects;

(*vii*) Deposit taking Non-Banking Financial Company as defined in clause (*e*) of the Explanation 4 to section 43 B of the Act;

(*viii*) Systemically Important Non-deposit Taking Non-Banking Financial Company as defined in clause (*g*) of the Explanation 4 to section 43B of the Act;

(*ix*) Public company engaged in providing long term finance for construction or purchase of houses in India for residential purpose and which is registered in accordance with the guidelines/direction issued by the National Housing Bank formed under National Housing Bank Act, 1987;

(*x*) Asset Reconstruction Companies registered under section 3 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SRFAESI) Act, 2002.

As stated earlier, this clarification is only for the purposes of section 194R of the Act. The treatment of such settlement/waiver in the hands of the person who had got benefitted by such waiver would not be impacted by this clarification. Taxability of such settlement/waiver in the hands of the beneficiary will be governed by the relevant provisions of the Act.

Question 2: Refer question No. 7 of the Circular No. 12 of 2022- If under the terms of the agreement, the expense incurred by the service provider is the cost of service recipient and such cost is reimbursed by the service recipient to service provider, how is it benefit/perquisite if the bill is not in the name of service recipient?

Answer: In answer to question No 7 of the Circular No 12 of 2022, it has been clarified that 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.

Now, if service provider incurs some expense in the course of rendering service to service recipient and the bill is in the name of service provider, then in substance (irrespective of the terms of the agreement) this expense is the liability of the service provider and not of service recipient. It is service provider who gets input credit of GST included in the expenses incurred by him. If it was the liability of the service recipient, then GST input credit would have been allowed to him (service recipient) and not to service provider. Hence, the answer to question No. 7 in the Circular No. 12 of 2022 correctly clarifies that in such a situation reimbursement of such an expense is

benefit/perquisite on which tax is required to be deducted under section 194R of the Act.

Subsequently, it has been brought to the notice that in GST, if service provider incurs an expense as "pure agent", then GST input credit is allowed to service recipient and not to service provider. Broadly speaking a pure agent is one who while making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursement (as actual, without adding it to the value of his own supply) for such supplies from the recipient of the main supply. While the relationship between them (provider of service and recipient of service) in respect of the main service is on a principal to principal basis, the relationship between them in respect of other ancillary services is that of a pure agent. Under the GST Valuation Rules, 2017 "pure agent" is given the following meaning.

"pure agent" means a person who

(*a*) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(*b*) neither intends to hold nor holds any title to the goods or services or both, so procured or provided as pure agent of the recipient of supply;

(*c*) does not use for his own interest such goods or services so procured; and

(*d*) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

The GST valuation rules provide that expenditure incurred as a pure agent, will be excluded from the value of supply, and thus also from aggregate turnover. However, such exclusion of expenditure incurred as a pure agent is possible only and only if all the conditions required to be considered as a pure agent and further conditions stipulated in the rules are satisfied by the supplier in each case. The supplier would have to satisfy the following conditions (in addition to the condition required to be satisfied to be considered as a pure agent and discussed above) for exclusion from the value as under:—

i. the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorization by such recipient;

ii. the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

iii. the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

In case these conditions are not satisfied, such expenditure incurred is included in the value of supply under GST. However, in the abovementioned case of "pure agent", if all the conditions are satisfied, the GST input credit is allowed to the recipient and it is not considered as supply of the pure agent, it is clarified that amount incurred by such "pure agent" for which he is reimbursed by the recipient would not be treated as benefit/perquisite for the purpose of section 194R of the Act.

Question 3: Refer question No. 7 of the Circular No. 12 of 2022- Question No. 30 of CBDT Circular No. 715, dated 8th August, 1995 clarifies that tax deduction under sections 194C and 194J is required to be made from the gross amount of bill including the reimbursement. A person has provided service to a Company and out of pocket expenses are charged by him to the Company along with service fee in the same bill. Company deducts tax under section 194J of the Act on both service fee component as well as on out of pocket expense in accordance with this circular. Is there a non-compliance with the provision of section 194R of the Act?

Answer: Relevant portion of CBDT Circular No. 715, dated 8th August, 1995 is as under

Question 4: Whether the deduction of tax at source under sections 194C and 194J has to be made out of the gross amount of the bill including reimbursements or excluding reimbursement for actual expenses?

Answer: Sections 194C and 194J refer to any sum paid. Obviously, reimbursements cannot be deducted out of the bill amount for the purpose of tax deduction at source.

If out of pocket expenses (reimbursement) are already part of the consideration in the bill on which tax is deducted under the relevant

provisions of the Act, other than section 194R, in accordance with the Circular No. 715, dated 8th August 1995, it is clarified that there will not be further liability for tax deduction under section 194R of the Act.

In the above example, out of pocket expense is part of the consideration in the bill for professional fee that is charged to the Company and the tax is deducted under section 194J of the Act on the entire consideration including on out of pocket expense. In such a case, the out of pocket expense is already included as part of professional fee. Hence, there is no further benefit/perquisite which requires tax deduction under section 194R of the Act.

Question 5: Refer question No. 8 of the Circular No. 12 of 2022- If there is a dealer conference to educate the dealers about the products of the company- (*i*) is there a requirement that all dealers must be invited in the conference, (*ii*) what if dealers arrive one day before and leave one day after and (*iii*) how to identify benefit against individual dealers in a group activity?

Answer: Representations have been received from various stakeholders seeking clarity on these questions arising out of answer to question No. 8. It is clarified that

(*i*) it is not necessary that all dealers are required to be invited in a dealer/business conference for the expenses to be not considered as benefit/perquisite for the purposes of tax deduction under section 194R of the Act.

(*ii*) Expenditure on participants of dealer/business conference for days which are on account of over stay prior to the dates of conference or beyond the dates of such conference would be considered as benefit/perquisite for the purposes of section 194R of the Act. However, a day immediately prior to actual start date of conference and a day immediately following the actual end date of conference would not be considered as over stay.

(*iii*) It is brought to the notice that there may be expenses during such dealer/business conference which need to be classified as benefit/perquisite and tax is required to be deducted under section 194R of the Act. However, there may be practical difficulties in identifying such benefit/perquisite to actual recipient due to the fact that it is a group activity and reasonable allocation is not possible. Non-compliance of the provision of section 194R of the Act, in such a

case, would not only result in disallowance under clause (*ia*) of section 40 of the Act but may also result in treating the benefit/perquisite provider as assessee in default under section 201 of the Act with all other consequences.

In order to remove these practical difficulties, it is clarified that if benefit/perquisite is provided in a group activity in a manner that it is difficult to match such benefit/perquisite to each participant using a reasonable allocation key, the benefit/perquisite provider may at his option not claim the expense, representing such benefit/perquisite, as deductible expenditure for calculating his total income. If he decides to opt so, he will not be required to deduct tax under section 194R on such benefit/perquisite and therefore he will not be treated as assessee in default under section 201 of the Act. Thus, in such a case he must add back the expenditure, representing such benefit/perquisite, to calculate his total income if such expenditure is debited in the account.

Answer to question No. 8 in the Circular No. 12 of 2022 is modified to this extent.

Question 6: Refer question No. 9 of the Circular No. 12 of 2022- Company "A" gifts a car to its dealer "B" and deducted tax on this benefit under section 194R of the Act. Dealer "B" uses this car in his business. Will he get deduction for depreciation in calculating his income under the head "profits and gains of business or profession"?

Answer: Once Company "A" has deducted tax on gifting of car in accordance with section 194 R of the Act (or released the car after dealer ."B" showed him payment of tax on such benefit) and dealer "B" has included this benefit as income in his income tax return, it would be deemed that the "actual cost" of the car for the purposes of section 32 of the Act shall be the amount of benefit included by dealer "B" as income in his income-tax return. Hence, dealer "B" can get depreciation on fulfillment of other conditions for claiming depreciation.

Question 7: Whether Embassy/High Commissions are required to deduct tax under section 194R of the Act?

Answer: For the removal of difficulty it is clarified that the provision of section 194R is not applicable on benefit/perquisite provided by, an organization in scope of The United Nations (Privileges and Immunity Act) 1947, an international organization whose income is exempt under specific

Act of Parliament (such as the Asian Development Bank Act 1966), an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state.

Question 8: Whether issuance of bonus share/right share is a benefit or perquisite if issued by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act and whether tax is required to be deducted under section 194R of the Act?

Answer: In case of bonus shares which are issued to all shareholders by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act, it has been represented that this does not result in any benefit to shareholders as the overall value and ownership of their holding does not change. Further cost of acquisition of bonus share is taken as nil for capital gains computation when this share is sold. Similar representations have been received seeking clarity on issuance of right shares.

It is clarified that the tax under section 194R of the Act is not required to be deducted on issuance of bonus or right shares by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company, as the case may be.

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