TDS on benefit or perquisite arising from business or profession

Section 194R provides that person responsible for providing to a resident, any benefit or perquisite, arising from business or exercise of a profession by such resident, shall ensure that, before providing such benefit or perquisite, tax is deducted from the value of such benefit or perquisite. The tax shall be deducted at the rate of 10% of the value of such benefit or perquisite. This provision is applicable with effect from 01-07-2022.

Deductor

Any person responsible for providing any benefit or perquisite, whether convertible into money or not, is required to ensure that the tax required to be deducted has been deducted in respect of such benefit or perquisite under Section 194R. The deductor can be a resident or a non-resident person. The tax shall be deducted before providing benefit or perquisite to the resident person.

For this purpose, the expression 'person responsible for providing' means the person providing such benefit or perquisite, or in the case of a company, the company itself, including the principal officer thereof.

However, this provision shall not apply to an individual or a HUF whose total sales, gross receipts, or turnover does not exceed Rs. 1 crore in the case of business or Rs. 50 lakhs in the case of the 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.

Deductee

Tax is required to be deducted under this provision if the benefit or perquisite is provided to a resident person and it is arising from business or the exercise of a profession by such resident.

Rate of TDS and Threshold limit

Tax is required to be deducted at the rate of 10% of the value or aggregate of the value of benefit or perquisite. The rate shall not be further increased by Surcharge and Health & Education Cess.

If the deductee does not furnish PAN, the tax shall be deducted at the rate of 20% as per Section 206AA or if the deductee has not furnished a return of income for a specified period, the payer shall deduct tax at the rate of 20% as per the Section 206AB.

Where both the provision of Section 206AA and Section 206AB are applicable, that is, the deductee has neither furnished his PAN to the deductor nor has he furnished his return of income for the specified period, the tax shall be deducted at the rates provided in section 206AA or section 206AB, whichever is higher.

Note: the provisions of section 206AB are omitted w.e.f. 01-04-2025.

The tax shall be deducted under this provision if the value or aggregate of the value of the benefit or perquisite provided or likely to be provided during the financial year exceeds Rs. 20,000. In such a situation, the tax will be deducted on the entire value of the benefit or perquisite and not merely the excess of Rs. 20,000.

TDS *where benefit or perquisite is provided in kind*

The first proviso to section 194R(1) provides that where the benefit or perquisite is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of the 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.

Where the payee himself pays tax, the tax would be required to be paid in the form of advance tax. The tax deductor may rely on a declaration and the 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 the TDS return along with the challan number.

Valuation of benefit or perquisite for TDS

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

(a) 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.

(b) 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.

Guidelines on Section 194R

The CBDT is empowered to issue guidelines for removing the difficulties arising in giving effect to the provisions of this section. Each such guideline shall be laid before each house of parliament and it shall be binding on the Income-tax authorities and the person providing the benefit or perquisite, i.e., deductor.

In the exercise of this power, the CBDT has issued *Circular No. 12, dated 16-06-2022*, and *Circular No. 18, dated 13-09-2022* for the following guidelines:

Whether Section 194R apply only `when benefit or perquisite is taxable under Section 28(iv)?

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 Section 28(iv) of the Act.

Whether Section 194R apply only when benefit or perquisite is taxable in the hands of the recipient?

Section 194R 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.

Whether section 194R apply where the benefit or perquisite is provided in the form of capital asset?

It has been held by the various courts that benefits or perquisites shall be taxable in the hands of the recipient even if they are in the nature of the capital asset. The asset given as benefit or perquisite may be a capital asset in a general sense of the term like car, land, etc. but in the hands of the recipient it is benefit or perquisite, and, accordingly, section 194R shall also apply in such cases.

Whether the recipient can claim depreciation on an asset received as a benefit?

If a person receives an asset as a gift and uses such asset in his business or profession then he will be allowed to claim depreciation on such asset if the following conditions are satisfied:

(a) Provider of such gift or benefit deduct tax or ensures payment of tax under Section 194R;

(b) Recipient includes this gift or benefit as his income in the income-tax return.

(c) The amount of benefit shown as income on the income-tax return would be deemed as the "actual cost" of the asset.

(d) Recipient fulfills the other conditions for claiming depreciation.

Whether section 194R apply in case of settlement or waiver of loan by banks or financial institutions?

Waiver or settlement of a loan by banks or financial institutions may be an income for the borrower. However, requiring banks or financial institutions to deduct tax under Section 194R on such transactions would put an extra cost on them because they would be required to bear the burden of tax in addition to taking a haircut. Hence, to remove the difficulty, it is clarified that the following banks or financial institutions would not be required to deduct tax under section 194R on one-time loan settlement with borrowers or waiver of loan:

(a) Public Financial Institution;

(b) Scheduled Bank;

(c) Cooperative Bank (other than a primary agricultural credit society);

(d) Primary Co-operative Agricultural and Rural Development Bank;

(e) State Financial Corporation or an institution notified under State Financial Corporation Act;

(f) State Industrial Investment Corporation being a Government Company, engaged in the business of providing long-term finance for industrial projects;

(g) Deposit-taking NBFC;

(h) Systemically Important Non-deposit taking NBFC;

(i) Public company engaged in providing long-term finance for the 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;

(j) Asset Reconstruction Companies.

It is to be noted that the relaxation from deduction of tax is provided only to the aforesaid banks or institutions. Thus, if the loan is waived or settled by any other lender then he would be required to deduct tax under Section 194R.

Further, the taxability of settlement or waiver of a loan in the hands of the borrower would be governed by the relevant provisions of the Act even if the lender is not required to deduct tax under Section 194R.

Whether sales discounts, cash discounts, and rebates are benefit or perquisite?

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

Logically these are also benefits though related to sales/purchases. 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 sellers in difficulty. To remove such difficulty it is clarified that no tax is required to be deducted under section 194R of the Act on sales discounts, cash discounts, and rebates allowed to customers.

However, at the same time, it is clarified in the Circular that 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 or perquisites on which tax is required to be deducted under section 194R (the list is not exhaustive):

(a) When a person gives Free Samples.

(b) When a person gives incentives (other than discount, or rebate) in the form of cash or kind such as car, TV, computers, gold coin, mobile phone, etc.

(c) When a person sponsors a trip for the recipient and his/her relatives upon achieving certain targets.

(d) When a person provides free ticket for an event.

(e) When a person gives medicine samples free to medical practitioners.

Whether section 194R apply on supplying of free goods under promotional schemes like 'buy more get more'?

Where free items from the stock of the seller are being offered with the purchase of some items, it is clarified that Section 194R shall not apply in such a case.

For instance, if the seller offers 2 items free with the purchase of 10 items. In substance, the seller is actually selling and the buyer is buying the 12 items at a price of 10 items. Thus, the seller and buyer record the transaction at the same value. In such a situation, there could be difficulty in applying the section 194R provision. Hence, to remove the difficulty it is clarified that on the above facts, no tax is required to be deducted.

Whether section 194R apply if instead of providing the benefit or perquisite directly to an entity, it is provided to the owner, director, or employee thereof?

It is clarified that where the benefit or perquisite is used by the owner, director, or employee of the recipient entity or their relatives who in their individual capacity may not be carrying on business or exercising a profession, the tax shall be required to be deducted in the name of recipient entity since the usage by owner/director/employee or relatives thereof is by virtue of their relation with the recipient entity and in substance, the benefit or perquisite has been provided 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 is required to be deducted by the company in the hands of the hospital as the benefit/perquisite is provided to the doctor on account of him being an 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 and deduct tax under Section 192. In such a case it would be first taxable in the hands of the hospital and then allowed as a 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. The hospital can get the credit of tax deducted under section 194R by furnishing its return of income.

Similarly, if the doctor is not an employee of the hospital but rather working as a consultant in the hospital. In this case, the benefit or perquisite provider may deduct tax under section 194R with the hospital as a recipient, and then the hospital may again deduct tax under section 194R for providing the same benefit or perquisite to the consultant doctor. To remove the 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 doctor as a recipient.

Here, it is to be noted that the threshold limit of Rs. 20,000 shall be required to be seen with respect to the recipient entity. For instance, if a pharmaceutical company provides benefits of worth Rs. 5000 to 10 doctors working as an employee in a hospital. The value of benefit would be seen with respect to the hospital and not the doctors. Thus, the aggregate value of the benefit provided in this case is Rs. 50,000, and, accordingly, the tax shall be required to be deducted.

Whether section 194R apply where the benefit or perquisite is provided to a Government entity?

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

Whether the amount of GST be included in the value of benefit or perquisite for TDS under section 194R?

The CBDT has clarified that GST will not be included for the purposes of valuation of benefit/perquisite for TDS under section 194R.

If an entity provides its product to social media influencers for publicity, will it be treated as a benefit or perquisite?

It is clarified that if the social media influencer returned the product like Car, Mobile, Outfit, Cosmetics, etc. to the entity after using it for rendering his services, i.e., social media influence, then it will not be treated as a benefit or perquisite for the purposes of section 194R. However, if the product is retained by the social media influencer then it will be in the nature of benefit/perquisite, and tax is required to be deducted accordingly under section 194R.

Whether reimbursement of out of pocket expenses would attract TDS under section 194R?

It is clarified that if the expenditure in respect of which the reimbursement is made is invoiced in the name of the person who is making the reimbursement then it shall not be treated as benefit or perquisite for the purpose of section 194R.

However, if the invoice is not in the name of the person making the reimbursement, then it shall be treated as a benefit or perquisite for the recipient, and, accordingly, tax shall be deducted under section 194R.

It is also clarified that even if the reimbursement is made on a cost-to-cost basis as per the terms of the agreement, it would attract TDS under section 194R if the expenditure in respect of which reimbursement is made is not invoiced in the name of the person making the reimbursement.

Whether reimbursement made to 'pure agent' would attract TDS under section 194R?

It is clarified that reimbursement made to a 'pure agent' would not be treated as a benefit/perquisite for the purpose of section 194R if the following conditions are satisfied:

(a) Pure agent makes payment to the third party on authorization by the principal;

(b) Amount of reimbursement is separately indicated in the invoice issued by the pure agent to the principal; and

Pure agent procures supplies from the third party in addition to the services he supplies on his own account.

Meaning of Pure Agent

"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 the 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 a 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.

Whether reimbursement would attract TDS under section 194R if it forms part of the consideration?

As per *Circular No. 715, dated 08-08-1995*, deduction of tax at source under Section 194C and Section 194J is made out of the gross amount of the bill including reimbursements. Thus, considering this fact, it is clarified that if the reimbursement forms part of the consideration in the bill on which tax is deducted under the relevant provisions of the Act (other than section 194R) then there will not be further liability for tax deduction under section 194R.

Whether expenditure pertaining to dealer or business conference be considered as benefit or perquisite for the purposes of section 194R?

It is clarified that the expenditure pertaining to deafer/business conference would not be considered as benefit or perquisite for the purposes of section 194R in a case where a dealer/business conference is held with the prime object to educate dealers/customers about any of the following or similar aspects:

• new product being launched

• discussion as to how the product is better than others

• obtaining orders from dealers/customers

• teaching sales techniques to dealers/customers

• addressing queries of the dealers/customers

• reconciliation of accounts with dealers/customers.

It is not necessary that all dealers are required to be invited in a conference for the expenses to be not considered as a benefit or perquisite. 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:

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

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

(c) Expenditure on participants of dealer/business conference for days which are on account of prior stay or overstay beyond the dates of such conference. However, a day immediately prior to the actual start date of the conference and a day immediately following the actual end date of the conference would not be considered as overstay.

Will section 194R apply if expenditure on dealer or business conference cannot be allocated to a particular dealer?

Where expenditure pertaining to dealer or business conference is treated as a benefit or perquisite for the participants, i.e., dealers, the benefit/perquisite provider is required to deduct tax under section 194R. Non-compliance with the provisions of section 194R would not only result in disallowance of such expense under Section 40(a)(ia) but may also result in treating the benefit/perquisite provider as assessee-in-default under Section 201.

To deduct tax under section 194R in respect of expenditures pertaining to dealer or business conferences, it is required to allocate such expenses to participating dealers. However, a dealer or business conference is a group activity. Thus, the allocation of expenses to each dealer may not be possible. Considering this fact, it is clarified that in such a situation, the benefit/perquisite provider may opt to not to claim the expenses, representing benefit or perquisite to dealers. If the benefit/perquisite provider 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.

Whether section 194R apply where the benefit or perquisite is provided by Embassy/High Commissions?

The provision of section 194R shall not apply if the benefit or perquisite is provided by the following:

(a) an organization in the scope of The United Nations (Privileges and Immunity Act) 1947;

(b) an international organization whose income is exempt under a specific Act of Parliament (such as the Asian Development Bank Act, 1966);

(c) an embassy;

(d) a High Commission;

(e) legation;

(f) commission;

(g) consulate;

(h) trade representation of a foreign state.

Whether section 194R apply on the issuance of bonus shares or right shares by a company?

It is clarified that tax under section 194R shall not be required to be deducted on the issuance of bonus shares or right shares by a company in which the public are substantially interested if bonus shares are issued or right shares are offered to all shareholders by such company.

Whether recipient can escape from tax liability if the provider of benefit or perquisite is not required to deduct tax under section 194R?

It is clarified that guidelines providing relaxation from deduction of tax under section 194R shall not impact the taxability of income in the hands of the recipient.

How to deposit TDS?

Tax deducted under this provision is required to be deposited to the credit of the Central Government through Challan ITNS 281 within 7 days from the end of the month in which the tax was deducted. However, the tax deducted during the month of March shall be deposited by 30th April of the next financial year.

Filing of TDS statement

The person responsible for the deduction of tax at source under this provision is required to file a statement of tax deducted at source in Form 26Q quarterly.

TDS Certificate

The deductor shall issue a TDS certificate to the assessee in Form No. 16A within 15 days from the due date of furnishing of the TDS statement.

Consequences for failure to deduct or deposit tax

Where any person responsible for deducting tax at source fails to deduct tax or after deducting fails to deposit the same, he shall be treated as assessee-in-default. In that case, interest under section 201 will be applicable.

If the deductor fails to deduct TDS, interest at the rate of 1% per month or part of the month shall be applicable, till such failure continues. Interest shall be calculated from the date when such tax was required to be deducted till the date such tax is actually deducted.

Further, if the deductor after having deducted the tax, fails to deposit the same to the credit of the Central Government, interest at the rate of 1.5% per month or part thereof shall be applicable till such failure continues. The interest computation shall commence from the date on which the tax was deducted and end with the date when such tax was deposited to the government.

Penalty and Prosecution

Failure to comply with the provisions of deduction of tax at source under this provision may result in penalties and prosecution as per the following provisions:

(a) If a person fails to deduct tax at source, he shall be liable for payment of penalty under Section 271C;

(b) If a person fails to ensure payment of tax, he shall be liable for payment of penalty under Section 271C and prosecution under Section 276B;

(c) If a person deducts tax but fails to deposit the same to the credit of the Central Government, he shall be liable for the penalty under Section 221 and prosecution under Section 276B.

However, no person shall be punishable under Section 276B if he proves that there was reasonable cause for the failure. Further, a person can also file an application for compounding of offence.

Consequences for failure to furnish TDS Statement?

Where any person fails to furnish a TDS statement, section 234E shall be applicable, wherein the deductor is liable to pay fees at the rate of Rs. 200 per day during such default continues. However, such fees should not exceed the amount of TDS.

Moreover, he shall be liable for penalties under sections 271H of Rs. 10,000 which can be extended to Rs. 100,000, and 272A of Rs. 500 for every day during which failure continues.

Consequences for failure to issue TDS Certificates

Where any person, responsible for issuing TDS Certificates, fails to issue such certificates, a penalty under section 272A shall be applicable of Rs. 500 for every day during which failure continues.

MCQs on TDS on benefit or perquisite arising from business or profession

Q1. The tax under section 194R shall be deducted if the value or aggregate of the value of the benefit or perquisite provided or likely to be provided during the financial year of goods purchased from the seller in the previous year exceeds _____.

(a) Rs. 20,000

(b) Rs. 10,000

(c) Rs. 50,000

(d) Rs. 5,000

Correct answer - (a)

Explanation: The tax shall be deducted under section 194R if the value or aggregate of the value of the benefit or perquisite provided or likely to be provided during the financial year exceeds Rs. 20,000.

Q2. What is the tax rate for the deduction of tax under section 194R?

(a) 5%

(b) 10%

(c) 1%

(d) 0.1%

Correct answer - (b)

Explanation: The tax shall be deducted under section 194Rat the rate of 10% of the value of benefit or perquisite.

Q3. Whether section 194R apply only when benefit or perquisite is taxable in the hands of the recipient?

(a) Yes

(b) No

Correct answer - (b)

Explanation: section 194R 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.

Q4. Which of the following TDS return is required to be furnished if tax is deducted under section 194R?

(a) 26Q

(b) 27Q

(c) 24Q

(d) 26QD

Correct answer - (a)

Explanation: The person responsible for the deduction of tax at source under section 194R is required to file a statement of tax deducted at source in Form 26Q quarterly.

Q5. Tax deducted under section 194R is required to be deposited to the credit of the Central Government through Challan _____.

(a) ITNS 280

(b) ITNS 281

(c) ITNS 285

(d) ITNS 283

Correct answer - (b)

Explanation: Tax deducted under section 194R is required to be deposited to the credit of the Central Government through Challan ITNS 281 within 7 days from the end of the month in which the tax was deducted. However, the tax deducted during the month of March shall be deposited by 30th April of the next financial year.

Q6. Which form is required to be issued as a TDS certificate if tax is deducted under section 194R?

(a) 16A

(b) 16B

(c) 16C

(d) 16D

Correct answer - (a)

Explanation: The deductor shall issue a TDS certificate to the assessee in Form No. 16A within 15 days from the due date of furnishing of the TDS statement.