



September 17, 2022

CBDT issued additional guidelines for TDS on business related Benefits or Perquisites under section 194R

Background

The Finance Act, 2022 had inserted a **new section 194R** in the Income-tax Act, 1961 applicable **with effect from July 1, 2022**, to provide for deduction of tax at source (TDS) on benefits/perquisites provided in respect of business or profession. Benefits/perquisites provided by the employer to employees are not covered by section 194R. Such benefits/perquisites continue to be governed by salary provisions.

To remove difficulties in implementing the provision of this section, the CBDT earlier issued guidelines vide Circular no. 12/2022 dated June 16, 2022 (kindly refer our alert: <https://www.gsapadvisors.com/publication/43/Tax-Alert-on-TDS-under-section194R-23062022.pdf>). Now the CBDT has issued additional guidelines¹ in this regard.

In this alert we have discussed additional guidelines issued by the CBDT.

1. Loan settlement/ waiver by a bank

TDS u/s 194R will not apply on one time loan settlement/ waiver of loan granted on reaching settlement with borrowers from specified financial institutions.

2. Reimbursement of cost incurred by service provider

TDS will apply on costs reimbursed to the service provider except if the expense invoice is in the name of the payer entity and if the service provider is a Pure Agent (as defined under GST valuation Rules, 2017).

3. Reimbursement of out-of-pocket expense with service fee invoice

In case out of pocket expense has been included with the invoice of service fee and TDS on entire amount is already deducted under other sections then there is no liability to further deduct tax u/s 194R.

¹ CBDT Circular No. 18/2022 dated September 13, 2022.

4. Dealer or Business conference

- Expenditure on dealer/ business conference is not considered as benefit/perquisites for the purposes of section 194R. In this regard, it is clarified that it is not necessary that all dealers should be invited to such conferences. It is clarified that expenditure on stay for a day immediately prior to the actual start date and a day immediately following the actual end date of the conference would not be considered as benefit/ perquisites for the purposes of section 194R.
- It is further clarified that if it is difficult to match benefit/perquisites against each participant individually and the benefit/perquisite provider may, at his option, do not claim the corresponding expense as a deductible expenditure while calculating his total income, then he will not be required to deduct tax u/s 194R on such benefit/perquisite.

5. Depreciation on capital asset received as benefit/perquisites

In case capital asset (e.g., car) is received as benefit/perquisite and TDS is deducted u/s 194R, the receiver of the gift will be eligible to claim depreciation on such capital asset provided if such benefit is included in his income.

6. Section 194R not to apply on Embassy/ High Commissions, etc.

It is clarified that TDS will not apply when benefit/perquisites is provided by an organization in the scope of the United Nations, international organization whose income is exempt under a specific Act of Parliament, Embassy and a High Commission, legation, commission, consulate, and the trade representation of foreign state.

7. Section 194R not to apply on bonus/ right share by a company in which the public is substantially interest

TDS u/s 194R is not applicable on issuance of bonus shares/right shares by a company in which the public is substantially interested. However, bonus share/ right share must have been issued to all shareholders.

Contact us

GSAP & Associates LLP
H-59AB, Lower Ground Floor
Kalkaji, New Delhi 110019
India
info@gsapadvisors.com
+91 (11) 4056 0819,
+91 (11) 4154 4443

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