



## Decoding section 194R

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The Finance Act, 2022 inserted section 194R ('section') in the Income-tax Act, 1961 ('the Act') with effect from 1 July 2022 which obligates a person providing any benefit or perquisite to a resident arising from their business or exercising of profession to ensure that taxes are withheld at the rate of 10% before providing such benefit or perquisite. It's an industry wide practice to extend benefits or perquisite to its employees, dealers, distributors and customers in order to increase sales or to ease of doing business. The Finance Minister, during her budget speech, indicated a need of rationalizing the taxes deducted at source ('TDS') provisions. Reading the relevant extract of the speech, one could understand that TDS provisions would get rationalized for business promotion strategies adopted by the companies usually in a principle-agent framework.

However, after reading the memorandum and the section, one could observe a slight shift from rationalizing TDS provisions for business promotion strategies adopted by the companies usually in a principle-agent framework to any benefit or perquisite given to a resident arising from business or exercise of profession. In order to give clarity to the tax deductors, the Central Board of Direct Taxes ('CBDT') has issued guidelines vide Circular No. 12 of 2022 dated 16th June 2022 ("the Circular"). The said Circular intend remove the difficulty/challenges and give more clarity **[1]**. The brief summary is as under:

- Test of taxability not to be undertaken by a deductor while making such deduction
- Benefit can be in cash or kind or both
- Capital assets also covered
- The section is not applicable on sales discount, cash discount & rebates as their inclusion would put the seller into difficulties
- Free samples would get covered
- User of benefits or perquisites is not relevant say for example where benefits or perquisites are 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 would also get covered
- Applicable for hospitals & doctors receiving samples
- Valuation – If the provider purchased it before providing it then value shall be the purchase price; In case provider manufactured it then value shall be price charged to customers

- For social media influencers, the products retained by the influencer shall be subjected to TDS
- Reimbursement of out-of-pocket expenses - If the invoice is not in the name of the Company/client and the payment is made by the client directly or is reimbursed to the consultant then it is a benefit or perquisite provided by the client to the consultant where section shall be applicable
- Services not subject to TDS if the dealers or business conference are held with the prime object to educate dealers/customers
- Clarification where cash component is insufficient to meet the tax deductions
- Calculation of value or aggregate of value of the benefit or perquisite triggering TDS shall be counted from Apr 1, 2022.

The taxpayers appreciate the CBDT for this welcome move. However, following observations may raise questions/concerns:

1. The budget speech intended to cover only benefits passed on to the agents, whereas the section and the memorandum are drafted wide enough to cover any benefit or perquisite, arising from business or the exercise of a profession, provided by any person to a resident. This shift of intent between the speech and the memorandum raises concerns. There is also ambiguity regarding applicability of this section in case where benefits are provided by a non-resident.
2. The section states that the person responsible to pay the perquisite or benefit shall, before providing such benefit or perquisite to such resident, ensure that tax has been deducted in respect of such benefit or perquisite at the rate of ten per cent. Usually, the TDS provisions require the deduction of tax "at the time of credit or payment, whichever is earlier". However, this section casts the responsibility on person to deduct the TDS before providing such benefit or perquisite. This indicates that credit of perquisite or benefit in the deductors books of account would not impact TDS provisions under this section.
3. The expansion of scope of this section to include benefits and perquisites in a capital asset in the hands of the recipient may raise concerns looking at the industry practice.
4. The section intends to cover only those benefits and perquisites which are convertible into money or not, arising from business or the exercise of a profession however, within the circular [1] CBDT has specifically included benefits and perquisites which are in cash. Therefore, whether a CBDT circular can expand the scope of the section, needs a considerate view.

5. The issue of reimbursement was settled by the CBDT way back in the year 1995 in Circular No. 715 however, we can see a shift in the positions taken by CBDT in TDS provisions then and now, which may raise concerns.

The following questions have arisen which would need further clarity from the CBDT:

1. In a situation where benefits or perquisites are given by manufacturers to distributors, distributors to the wholesaler/retailer and then finally to customers, whether each of this leg of supply chain shall be subject to TDS under this section? The manufacturer or retailer are not ultimate beneficiary of these benefits or incentive therefore, one may deduct TDS only on the last leg of retailer paying to the ultimate customer. A clarification regarding the same would be helpful.

2. There could be situations where multiple TDS provisions are applicable on the same transaction in such case, a clarification addressing such aspects would be helpful.

3. Clarification as to whether the write off debts would be considered as perquisite or benefit, is also a matter which requires clarity.

4. Clarification as to whether issues of bonus shares or rights issues would be included within the preview of perquisite or benefit, needs to be clarified.

5. Consideration of extending the benefit of NIL withholding certificate to this section can be welcome.

Above are some of the issues which various deductors may face while implementing the circular. Taxpayers look forward for various changes in the form of SOPs, accounting system experiences and so on once the implementation begins. It is suggested that the tax department should enlighten the taxpayers through video conferencing or a public meet, which will help all the industry to prepare themselves for on ground implementation.

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