



## *My Dear Friend*

*I am presenting Thursday Article TDS on Benefit or Perquisite (both) received by Resident in India*

- 1. Any kind of non-compliance is attracting financial penalty + prosecution (both)*
- 2. It's humbly suggested to stop non-compliance to deduct TDS on Benefit or Perquisite (both) under section 194R.*
- 3. I trust that you will be enriched by reading this article*

● *With best wishes from CA Satish Agarwal* ●



## ***TDS on Benefit or Perquisite (both) received by Resident in India***

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## **(A) Introduction on Tax on Benefit or Perquisite received by Resident**

### **1. Reasons for Introducing of Sec. 194R of ITA 1961**

(i) *Govt. of India (Govt.) had observed that majority of taxpayers were claiming the expenses under business promotion through offering the benefit + perquisite + gift + facility + etc. (all) to business dealers + employees (both) + claiming expenditure under section 37 of ITA 1961*

**But**

(ii) *Majority of business dealers + employees (both) were not declaring the benefit + perquisite + gift + facility + etc. (all) under section 28(iv) + 17(2) (both) in Income Tax Returns (ITRs)*

(iii) *Hence Govt. has introduced section 194R to tackle the undisclosed benefit + perquisite + gift + facility + etc. (all) in hands of dealers + employees (both) under section 28(iv) + 17(2) both*

### **2. Introduction on Benefit or Perquisite (both) as received by Resident of India**

(i) *Liability to deduct TDS @10% for providing any benefit + perquisite + gift + facility + etc. (all) to resident of India in cash or in kind where value of benefit + perquisite + gift + facility + etc. (all) are exceeding INR 20 thousand during previous year under section 194R of Income Tax Act (ITA) 1961.*

(ii) *New section 194R is applicable from July 01<sup>st</sup> 2022 on 100% taxpayers except individual + HUF (both) where sale turnover or gross receipt or total turnover (all) are not exceeding 100 Lac or 50 Lac under business or profession respectively*

(iii) *Receiver of benefit + perquisite + gift + facility + etc. (all) are required to offer as income under profit or gain of business or profession (section 28(iv)) + under salary (section 17(2) of ITA 1961)*

(a) *Hence provider of benefit + perquisite + gift + facility + etc. (all) are required to deduct TDS @10% under section 194R where income of receiver is taxable under section 28(iv) of ITA 1961*



(b) *Provider of benefit or perquisite (both) are required to deduct TDS @ normal slab of income tax under section 192 of ITA 1961 where income of receiver is taxable under section 17(2)*

### **3. Taxable Benefit or Perquisite (both) received by Resident of India**

● *Taxable benefit + perquisite + gift + facility + etc. (all) are includes:*

(i) (a) *Any benefit + perquisite + gift + facility + etc. (all) as received in cash or in kind or combination of cash + kind (both) + to be enjoyed by resident of India against business or profession or salary + benefit or perquisite (both) are taxable as profits and gains of business or profession + salary (both) under section 28(iv) + 17(2) (both)*

(b) *However benefit + perquisite + gift + facility + etc. (all) received be against consideration to be paid in monetary term for business or profession or salary + benefit or perquisite (both) are taxable as business or profession + salary (both) under section 28(iv) + 17(2) (both)*

(ii) *100% value of benefit + perquisite + gift + facility + etc. (all) be converted in monetary terms as arises through business or profession or salary under section 28(iv) + 17(2) (both)*

### **4. Non Taxable Benefit or Perquisite (both) received by Resident of India**

● *Non taxable benefit + perquisite + gift + facility + etc. (all) are includes:*

(i) (a) *Any benefit + perquisite + gift + facility + etc. (all) are provided on special occasion like Diwali sweets + marriage + marriage Anniversary + birthday + etc. (all) are not taxable under section 28(iv) + 17(2) (both) beside aggregate annual value is exceeding INR 20 thousand*

(b) *Hence provider of benefit + perquisite + gift + facility + etc. (all) are not responsible for deducting TDS under section 194R + 192 (both) beside aggregate annual value is exceeding INR 20 thousand*

(c) *However Diwali sweets (only) are not taxable as benefit + perquisite + gift + facility + etc. (all) for deducting TDS under section 194R + 192 (both) beside aggregate annual value is exceeding INR 20 thousand*

(d) *But diwali bonus + etc. (both) are taxable as benefit + perquisite + gift + facility + etc. (all) under section 17(2) where aggregate annual value is exceeding INR 20 thousand*



- (ii) (a) **Honorarium as given to resident as guest of honour for function or event (both) are not taxable under section 28(iv) + 17(2) (both).**
- (b) **Hence provider of honorarium to resident as guest of honour for function or event (both) are not responsible to deduct TDS under section 194R + 192 (both).**

## **5. Important Clarifications on Benefit or Perquisite received by Resident**

- (i) **Aggregate annual value exceeding INR 20 thousand to be computed from April 1<sup>st</sup> 2022 to March 31<sup>st</sup> 2023 (12 month) but section 194R is applicable from July 1<sup>st</sup> 2022.**
- (ii) **Hence section 194R is not applicable from April 1<sup>st</sup> 2022 but Aggregate annual value as exceeding INR 20 thousand to be computed from April 01<sup>st</sup> 2022**
- (iii) **Aggregate annual value exceeding INR 20 thousand to be computed from April 1<sup>st</sup> 2022 to March 31<sup>st</sup> 2023 (12 month) including as cash + non-cash (both) benefit + perquisite + gift + facility + etc. (all)**
- (iv) **Meaning of Resident includes:-**
  - (a) **Individual**
  - (b) **HUF**
  - (c) **Partnership**
  - (d) **LLP**
  - (e) **Company**
  - (f) **Co-operative Society**
  - (g) **AOP**
  - (h) **BOI**
  - (i) **Trust**
- (v) **Meaning of gift + etc. (both) include:-**
  - (a) **Gold coin**
  - (b) **Holiday Package**
  - (c) **Coupon**
  - (d) **Laptop**
  - (e) **Etc.**



- *These gift + etc. (both) are to be given to dealer in accordance with norms + business traditions + agreement with dealer (all)*

*(vi) Meaning of turnover to deduct TDS under section 194R includes:-*

*(a) Meaning of turnover to deduct TDS under section 194R as exceeding INR 20 thousand but TDS to be deducted on 100% amount like benefit + perquisite + gift + facility + etc. (all) as provided to resident of India at 2 time i.e. 10 thousand on July 15<sup>th</sup> 2022 + 15 thousand on 15<sup>th</sup> Sep 2022 = INR 25 thousand*

*(b) Hence person as responsible under section 194R is required to deduct TDS INR 2500 @ 10% against benefit + perquisite + etc. (all) on INR 15 thousand against September 15<sup>th</sup> 2022*



## **(B) Important Clarifications through CBDT Circular 18, Sep 13<sup>th</sup> 2022**

### **1. Applicability of Sec. 194R against loan settlement + waiver by bank + etc.**

- **Now Section 194R is not applicable against 1<sup>st</sup> time loan settlement + waiver (both) by followings:-**

**(i) By Public Financial Institution**

**(ii) By Scheduled Bank**

**(iii) By Cooperative bank except primary agricultural credit society**

**(iv) By Primary co-operative Agricultural and Rural Development Bank**

**(v) By State Financial Corporation**

**(vi) By State Industrial Investment Corporation**

**(vii) By Deposit taking Non-Banking Financial Company (NBFC)**

**(viii) By Systemically Important Non-deposit Taking Non-Banking Financial Company**

**(ix) By Public company (as engaged in providing long term finance for construction or purchase of houses in India for residential purpose)**

**(x) By Asset Reconstruction Company (ARC)**

- **Abovementioned clarification is applicable for non-applicability of section 194R for lender like bank + etc. Hence Abovementioned clarification is not applicable to borrower for income tax on loan settlement + waiver (both) in hands of borrower.**

### **2. Applicability of Sec. 194R against Dealer Conference to Educate Dealers**

**(i) Now Section 194R is applicable against dealer conference expenses where benefit or perquisite (both) are allocated on participant dealer through using reasonable allocation key**

**(a) Now Section 194R is not applicable against dealer conference expenses where provider of benefit or perquisite has not claimed the expenses against dealer conference expenses under section 37 + benefit or perquisite (both) are not allocated on dealer through using reasonable allocation key**



*(b) Hence section 194R + 201 (treated as assessee in default) are not applicable + provider of benefit or perquisite (both) are not claimed as expenditure under section 37*

### **3. Applicability of Sec. 194R against Gift of Car to Business Dealer**

- (i) Now Section 194R is applicable against Gift of car to business dealer*  
+  
*(ii) Business dealer is permitted to claim depreciation under section 32 of ITA 1961 on car received as gift where business dealer has included the value of car as income under profits and gains from business or profession under section 28(iv)*

### **4. Applicability of Sec. 194R against Embassy + High Commission + etc.**

- (i) Now Section 194R is not applicable where Embassy + High Commission + etc. (all) are covered under United Nations (Privileges and Immunity Act) 1947*
- (ii) Hence Section 194R is not applicable on international organization where income is exempted under specific Act of Parliament like Asian Development Bank Act 1966 + embassy + High Commission + legation + commission + consulate + trade representation of foreign Govt.*

### **5. Applicability of Sec. 194R against issue of Bonus Share + Right Share**

- *Now Section 194R is not applicable against issue of Bonus Share + Right Share (both) where issuing entity is public limited company + public substantially interested + shares are issued to 100% shareholders.*

### **6. Applicability of Sec. 194R against reimbursement of expenses**

- (i) Now Section 194R is not applicable against reimbursement of expenses by service recipient where service provider is pure agent in accordance the GST 2017 + service provider has not added his profit on amount of actual expenses*
- (ii) Hence Section 194R is applicable against reimbursement of expenses by service recipient where service provider is not pure agent in accordance the GST 2017 or service provider has added his profit on amount of actual expenses*





**7. Applicability of Sec. 194R against reimbursement of out of pocket exp.**

- (i) *Now Section 194R is not applicable against reimbursement of out of pocket expenses when out of pocket expenses are already included in fee by service provider + TDS is made by service recipient on reimbursement of out of pocket expenses under section 194C or 194J (both)*
- (ii) *Now Section 194R is applicable against reimbursement of out of pocket expenses when out of pocket expenses are already not included in fee by service provider + TDS is not made by service recipient on reimbursement of out of pocket expenses under section 194C or 194J (both)*
- (iii) (a) *Hence 1 Section either 194R or 194J is applicable.*

(b) *Therefore application of simultaneously 2 sections like 194R + 194J (both) are not permitted*



## **(C) Important Clarifications through CBDT Circular 12, June 16<sup>th</sup> 2022**

### **1. Applicability of Sec. 194R against benefit or perquisite in cash or in kind**

**(i) Now Section 194R is applicable :-**

**(a) On benefit or perquisite in cash**

**(b) On benefit or perquisite in kind**

**(c) On benefit or perquisite as partly in cash + partly in kind (combination of both)**

**(ii) (a) Recipient of service is required to take evidence against 100% payment of advance income tax by service provider before delivering the benefit or perquisite in kind where recipient of service is required to deduct TDS against benefit or perquisite in kind under section 194R**

**(b) Recipient of service is required to take evidence against not 100% (proportionate to in kind) payment of advance income tax by service provider before delivering the benefit or perquisite as not 100% in kind where recipient of service is required to deduct TDS against benefit or perquisite not 100% in kind under section 194R**

### **2. Applicability of Sec. 194R against sales discount + cash discount + rebates**

**(i) Now Section 194R is not applicable against sales discount + cash discount + rebates (all) to customer**

**(ii) Now Section 194R is applicable against free samples to customer**

**(iii) Now Section 194R is applicable against following benefit or perquisite (both) in kind:-**

**(a) As free car + TV + computer + gold coin + mobile phone + etc.**

**(b) As free trip for dealer or customer (both) for himself + his relatives after achieving sale target**

**(c) As free ticket for any program or event (both)**

**(d) As free sample of medicine to medical practitioner.**

**(iv) Now Section 194R is not applicable against benefit or perquisite (both) to Govt. entity like Govt. Hospital as not carrying any business or profession.**



### **3. Applicability of Sec. 194R against valuation of benefit or perquisite (both)**

- (i) Valuation of benefit or perquisite (both) to be computed at Fair Market Value (FMV) to deduct TDS under section 194R*
- (ii) Valuation of benefit or perquisite (both) are permitted at cost where provider of benefit or perquisite has purchased the benefit or perquisite before providing to recipient to deduct TDS under section 194R*
- (iii) Valuation of benefit or perquisite (both) are permitted at sale price to customer where provider of benefit or perquisite is manufacturing the item as given to recipient to deduct TDS under section 194R.*
- (iv) Valuation of benefit or perquisite (both) are permitted without inclusion of GST to deduct TDS under section 194R.*

### **4. Applicability of Sec. 194R against use of product for publicity by influencer**

- (i) Now Section 194R is applicable against use of product like car + mobile + outfit + cosmetics + etc. (all) for publicity by social media influencer where influencer has retained the product under benefit or perquisite to deduct TDS under section 194R.*
- (ii) Hence Section 194R is not applicable against use of product like car + mobile + outfit + cosmetics + etc. (all) for publicity by social media influencer where influencer has not retained the product under benefit or perquisite to deduct TDS under section 194R.*

### **5. Applicability of Sec.194R against period of benefit or perquisite (both)**

- (i) Computation of period of benefit or perquisite (both) for aggregating annual value exceeding INR 20 thousand to be computed from April 1<sup>st</sup> 2022 to March 31<sup>st</sup> 2023 (12 month) including as cash + non-cash (both) benefit + perquisite + gift + facility + etc. (all)*
- (ii) (a) Period of benefit or perquisite as provided up to June 30<sup>th</sup> 2022 not be taken to deduct TDS under section 194R.*
- (b) However Amount of benefit or perquisite as provided up to June 30<sup>th</sup> 2022 to be taken for computing INR 20 thousand to deduct TDS under section 194R*



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