

Section 194R: Tax on benefit or perquisite or Reformed Fringe Benefit Tax

Applicability : 01st July 2022

KNM Management Advisory Services Private Limited

Our Mission

To provide Fair, Accurate, Independent, Reliable and Quick services to our clients.

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Background- 194R

Section 194R : Deduction of TDS if benefits/Perquisites provided by Any person to a Resident arising from business/profession.

Applicability :

- Value of benefit or perquisite provided > **Rs. 20,000 (Cash or Kind or both)**.
- **Rate @ 10%**
- If cash is not sufficient then Advance tax must be paid by the recipient on such benefits/Perquisites.

Exception:

- **Individual or a HUF** are not liable to deduct if in **immediately preceding financial year**:
 - business turnover < **one crore rupees** or,
 - profession gross receipts < **fifty lakh rupees**

Sr. No.	Guidelines Questions	Resolutions	Reference- Please refer
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Clarification 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?

- **No.**
- **The deductor is not required to check or verify the taxability of amount or the rate of taxability in the hands of the recipient, whether is resident or non-resident.**

Clarification 2: Is it necessary that the benefit or perquisite must be in kind for section 194R of the Act to operate?

- **No.**
- Benefits can be in cash or kind or partly in cash and in kind
- Deductor required to deduct TDS, whether the benefit or perquisite is **either in cash or in kind or partly in cash or partly in kind.**

Clarification 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?

- **Yes**
- Tax deducted in all cases where **benefit or perquisite (of whatever nature) is provided.**
- Courts have held many **benefits or perquisites to be taxable even though they are in the nature of capital asset.**
- Deductor is not required to check if the benefits or perquisites is taxable in the hands of recipient.

Clarification 4: Whether sales discount, cash discount and rebates are benefit or perquisite?

- **No** tax is not required to be deducted u/s 194R on sales discount, cash discount and rebates allowed to customers.
- Even in case, a seller is **offering free item on certain purchase, still it will not be taxable**. For Example: Sellers offer 2 items free with purchase of 10 items. But this is not a case of free sample, **in case of free sample having worth more than INR 20000 will be come under the preview of TDS u/s 194R**
- Examples of benefits/perquisites on which tax is required to be deducted - **free Samples, car, TV, computers, gold coin, mobile phone, sponsors a trip upon achieving certain targets, free ticket for an event, medicine samples free to medical practitioners.**
- The provision of section 194R of the Act shall not apply if the benefit or perquisite is being provided to at Government entity, like Government hospital, not carrying on business or profession

- Benefits/Perquisites received by the Owner/director/employee/their relative of the recipient entity will be taxable in the hands of recipient entity.

For Example 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 94R 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.

Clarification 5: How is the valuation of benefit/perquisite required to be carried out?

- **The valuation** would be based on **fair market value(FMV)** of the benefit or perquisite **except** in following cases:-
- benefit/perquisite provider **has purchased** the benefit/perquisite **before providing it to the recipient** i.e. **purchase price** shall be the **value for such benefit/perquisite.**
- 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.**
- **GST will not be included** for the purpose of **valuation.**

Clarification 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?

- If the **product is returned to the manufacturing company after using-: No TDS u/s 194R.**
- If the **product is retained -: then it will be in the nature of benefit/perquisite and tax is required to be deducted under section 194R of the Act.**

Clarification 7: Whether reimbursement of out of pocket expense incurred by service provider in the course of rendering service is benefit/perquisite?

- **Yes, however** it depends on the facts of the case. Lets take an example If Mr. X gets services from the services provider say Y. If Mr. Y take the services of travelling agent Mr. Z, then:

Scenarios	Benefits/Perquisite	TDS Impact
Invoice is in the Mr. X, and he reimbursed the travelling cost made by Mr. Y	Not a benefit/perquisite	NO TDS u/s 194R
Invoice is not in the name of "X" and the payment is made by "X" directly or reimburse to Mr. Y	Yes it will be treated as benefit/perquisite provided by "X" to the consultant	Yes TDS deducted u/s 194R

Clarification 8: If there is a dealer conference to educate the dealers about the products of the company - Is it benefit/perquisite?

- **No if dealer/business conference is held with the prime object to educate 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

Clarification 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 the tax has been deposited?**

- Benefits provider provides benefit in kind to a recipient and tax is required to be deducted under section 194R of the Act, the **Benefit provider 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.**
- In the **Form 26Q** he will need to **show it as tax deducted** on benefit provided.

Clarification 10: Section 194R would come into effect from the 1st July 2022. Second proviso to subsection (I) 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?

- Since, the **threshold of Rs 20,000** is with respect to the **financial year**
- Calculation of **value or aggregate of value of the benefit or perquisite shall be counted from 1st April, 2022.**
- **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.

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Thank You

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