



Tax Insights

17 June 2022

CBDT issues guidelines for withholding tax under section 194R of the Act on benefit or perquisite

In brief

The Finance Act, 2022 inserted section 194R in the Income-tax Act, 1961 (the Act) with effect from 1 July 2022. This provision stipulates an obligation on any person providing any benefit or perquisite to a resident arising from their business or exercising of profession to ensure that tax is withheld at the rate of 10%. Taxpayers were awaiting clarifications on the applicability of section 194R of the Act on various types of transactions. The Central Board of Direct Taxes (CBDT) has now issued guidelines¹ exercising the powers given in the said section.

In detail

Guidelines on section 194R of the Act – Applicability, valuation, etc.

Sl. No.	Issues	Guidelines
1	Requirement to check if the amount is taxable under section 28(iv) of the Act before withholding tax under section 194R of the Act	The benefit provider is not required to verify whether the amount of benefit or perquisite is taxable in the hands of the recipient under section 28(iv) of the Act or under any other section.
2	Applicability on cash or monetary benefit or perquisite	The tax under section 194R of the Act is required to be withheld, immaterial of the benefit or perquisite being in cash or kind or partly in cash and partly in kind.
3	Applicability if benefit or perquisite is in the form of capital asset	The asset given as benefit or perquisite may be a capital asset in general sense of the term such as car, land, etc. but in the hands of the recipient, it is a benefit or perquisite. Accordingly, tax is required

¹ Circular No. 12 of 2022 dated 16 June 2022

Sl. No.	Issues	Guidelines
		to be withheld in all cases where benefit or perquisite (of whatever nature) is provided.
4	<p>Applicability on</p> <ul style="list-style-type: none"> • sales discount, cash discount and rebates • free-of-cost items (specific scenario) • free samples • other incentive schemes • government entity 	<p>Sales discount, cash discount and rebates</p> <p>Logically, sales discounts, cash discount or rebates allowed to customers from the listed retail price, etc. are also benefits, though related to sales or purchase. However, to remove the difficulties faced by sellers, it is clarified that no tax is required to be withheld under section 194R of the Act on sales discount, cash discount and rebates allowed to customers.</p> <p>Free-of-cost items (specific scenario)</p> <p>Where a seller is offering free-of-cost items, such as two items free with a purchase of ten items, then no tax is required to be withheld under section 194R of the Act.</p> <p>Free samples and other incentive schemes</p> <p>Relaxation from withholding of tax is not applicable on the following (the list is illustrative and not exhaustive):</p> <ul style="list-style-type: none"> • giving free samples • incentives (other than discount, rebates) such as car, TV, computers, gold coin, mobile phone, etc. • sponsoring trip for recipient and their relatives upon achieving targets • free event tickets • free medicine samples to medical practitioners <p>It is clarified that even if benefit or perquisite is used by the owner or director or employee or relatives of the recipient entity, who in their individual capacity, may not be carrying on business or exercising of profession, tax is required to be withheld by the benefit provider in the name of the recipient entity.</p> <p>The threshold of INR 20,000 is required to be seen with respect to the recipient entity.</p> <p>Government entity</p> <p>The provisions of section 194R of the Act will not apply if the benefit or perquisite is being provided to a government entity, such as a government hospital, not carrying on business or profession.</p>
5	Valuation of benefit or perquisite	<p>The valuation would be based on the fair market value of the benefit or perquisite except in the following cases:</p> <ol style="list-style-type: none"> i) For goods purchased by the benefit provider before providing it to the recipient – Purchase price will be the value. ii) For goods manufactured by the benefit provider – Price being charged to customers for such items will be the value.

Sl. No.	Issues	Guidelines
		It is clarified that GST will not be included for the purposes of valuation of benefit or perquisite.
6	Applicability on products given to social media influencer	<p>If the product is returned to the manufacturing company after using for the purpose of rendering service, then it will not be treated as a benefit or perquisite.</p> <p>If the product is retained, then it will be in the nature of benefit or perquisite, and tax is required to be withheld under section 194R of the Act.</p>
7	Applicability on reimbursement of out-of-pocket expense (OPE) incurred by the service provider in the course of rendering services	<p>Any expenditure (for example travel, boarding and lodging), which is the liability of a service provider, if met by the service recipient, is, in effect, a benefit or perquisite provided by the service recipient to the service provider in the course of business or profession.</p> <p>In this case, if the invoice is not in the name of the service recipient and the payment is made by the service recipient directly or reimbursed, it would be the benefit or perquisite provided by the service recipient to the service provider, and tax under section 194R of the Act is required to be withheld.</p> <p>However, in the above case, the reimbursement of expenses by the service recipient to the service provider will not be considered as benefit or perquisite for the purpose of section 194R of the Act if the invoice is obtained in the name of the service recipient.</p>
8	Applicability on dealer conference to educate dealers about the products of the company	<p>Section 194R of the Act would not be applicable where the prime object of the dealer or business conference is to educate the dealers or customers about any of the following or similar aspects:</p> <ul style="list-style-type: none"> • New product being launched • Discussion as to how the product is better than others • Obtaining orders from dealers or customers • Teaching sales techniques to dealers or customers • Addressing queries of the dealers or customers • Reconciliation of accounts with dealers or customers <p>The above-mentioned conference must not be in the nature of incentives or benefits to select dealers or customers who have achieved particular targets.</p> <p>Expenditure would be considered a benefit or perquisite for the purpose of section 194R of the Act in the following cases:</p> <ul style="list-style-type: none"> • Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer or business conference • Expenditure incurred for family members accompanying the person attending the dealer or business conference

Sl. No.	Issues	Guidelines
		<ul style="list-style-type: none"> Expenditure on participants of dealer or business conference for days on account of prior stay or overstaying beyond the dates of such conference.
9	Clarity with respect to satisfaction of the benefit provider on payment of tax in respect of benefit or perquisite, where the benefit or perquisite is in kind or partly in kind (and cash is not sufficient to meet tax to be withheld)	<p>Recipient of benefit or perquisite to pay tax in the form of advance tax. The benefit provider may rely on a declaration along with copy of the advance tax payment challan provided by the recipient. The benefit provider would then be required to report the said transaction in the withholding tax return along with challan number.</p> <p>Alternatively, for removing difficulties, if any, the benefit provider may withhold tax under section 194R of the Act and pay to the government considering the tax paid by them as a benefit under section 194R of the Act.</p>
10	Clarification with respect to computation of threshold limit of INR 20,000 for financial year (FY) 2022-23	<p>The provisions of section 194R of the Act will be applicable on any benefit or perquisite provided on or after 1 July 2022, if the value or aggregate value of the benefit or perquisite provided or likely to be provided to a resident exceeds INR 20,000 during the FY 2022-23 (including the period from 1 April 2022 to 30 June 2022).</p> <p>The benefit or perquisite which has been provided on or before 30 June 2022 would not be subjected to withholding tax under section 194R of the Act.</p>

The takeaways

Tax to be withheld under section 194R of the Act is effective from 1 July 2022. While the CBDT circular provides relief to manufacturers, dealers and distributors by excluding tax to be withheld on sales discount, cash discount and rebates, applicability of withholding tax provisions to free samples will have a wide impact. Several aspects such as the definition of benefit or perquisite, withholding tax on loyalty points, wallet money or online credit which expire, etc. still remain unaddressed. These aspects may require taxpayers to take positions in absence of specific clarification.

About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 156 countries with over 295,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.

PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

© 2022 PwC. All rights reserved.

Follow us on

[Facebook](#), [LinkedIn](#), [Twitter](#) and [YouTube](#).

pwc.in

In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity.

©2022 PricewaterhouseCoopers Private Limited. All rights reserved.