



The Institute of Chartered  
Accountants of India  
(Setup by an Act of Parliament)

## Western India Regional Council (WIRC) of The Institute of Chartered Accountants of India (ICAI)

# Analysis of Section 194R

TDS on **Benefit or Perquisite** in respect of  
Business or Profession  
applicable w.e.f. **1<sup>st</sup> July 2022**

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# Coverage:

Reference	Heading
194R	Deduction of tax on benefit or perquisite in respect of business or profession
Circular 12 (dtd - 16.06.2022)	Guidelines for removal of difficulties under sub-section (2) of Section 194R

## Backdrop

Particulars	Remarks
Existing Provisions	Section 28(iv) - The value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is to be charged as business income in the hands of the recipient of such benefit or perquisite.
Controversy	Non-reporting of the receipt of benefits in the return of income by the recipient, leading to furnishing of incorrect particulars of income
Need for Introduction	Introduced to widen and deepen the tax base

## Introduction to 194R

- TDS obligation on person providing any benefits / perquisite to a resident arising from business or exercise of a profession by such resident
- TDS applies irrespective of whether benefit / perquisite convertible into money or not
- TDS applies where aggregate value of benefit /perquisite provided to a resident exceeds Rs. 20,000 in a Financial Year
- Rate of TDS –10 percent of the value of such benefit or perquisite
- Payer's obligation to ensure that tax has been deducted before such benefit or perquisite is released.
- Payer to ensure that tax required to be deducted is paid, where the benefit or perquisite is in kind (wholly or partly) and cash component, if any, is not sufficient to cover TDS
- Not applicable for Individuals / HUF with turnover not exceeding stipulated threshold
- Amendment effective from **1 July 2022**
- Guidelines issued by the CBDT vide Circular No 12 of 2022 dated 16 June 2022 for removal of difficulties

# Impacted Sectors

FMCG & Consumer Durables



Retail & Agri



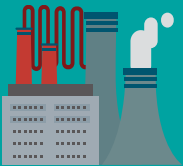
Hospitality



Life Sciences  
–  
Pharmaceutical & Healthcare



Industrial Markets



Tourism & Travel



Technology, Media and Communications



Financial Services



Energy and Natural Resources



IT/ITeS



Infrastructure & Real Estate



Automotive



## Section - 194R

Heads	Particulars
Applicable to (Deductor)	<b>Any Person</b> responsible for providing benefit or perquisite  [including Individual/HUF having turnover in preceding financial year exceeding Rs 1 Crore in case of Business and Rs 50 Lacs in case of Profession ( <i>Finance Act 2020 had introduced this concept for 194A, 194C, 194H, 194I, 194J which is continued for 194R</i> )
Coverage	<b>benefit or perquisite</b> , whether convertible into money or not, arising from business or exercise of profession, provided to <b>'Resident'</b>
Rate of TDS	<b>10%</b> of value of such benefit or perquisite
Timing	<u>before</u> providing benefit or perquisite
Threshold Limit	Value or aggregate > INR 20,000 in Previous year

## Who is the person responsible for providing benefit or perquisite?

- Section 204 defines ‘person responsible for **paying**’
- “Person responsible for **providing**” is defined by way of explanation to 194R

“person responsible for providing” means the person providing such benefit or perquisite, or in case of a company, the company itself including the principal officer thereof.

- Example:

For example, a Company agrees to arrange tours for its dealers and distributors/agents who achieve specific targets. It is the Company that has to comply with Section 194R, not the tour operator/hotels/airlines who, after accepting payment from the company, delivers the agreed/promised foreign tour to the dealers/distributors/agent.

## Applicability

- This section is not restricted to pharma industry and applies to everyone
- In the following scenarios, the tax shall not be deducted u/s 194R:
  - (i) If an employer-employee relationship exists [check applicability u/s 192]
  - (ii) If the recipient is a non-resident [check applicability u/s 195]
  - (iii) If the benefits or perquisites not arising from business or exercise of profession of the recipient
  - (iv) If benefits or perquisites are provided to a customer who does not engage in business or exercise of a profession
- ....“benefit or perquisite” is provided and it is **arising from business or the exercise of a profession**



## *Applicability... continues...*

### *arising from business or the exercise of a profession*

- w.r.t. section 28(iv) it contemplates not some connection with business/profession but it should **originate from and be intimately connected with the business/profession**
- **ITO vs Udavalli Construction [2021] 131 taxmann.com 204** (visakhaparnam-Tribunal): “the expression ‘arising from the business’ essentially implies that the benefit or perquisite **must be in the nature of a business receipt or revenue receipt**”.

Assessee-firm purchased a vacant land along with another firm by making equal contribution of investment - Land was retained for 34 months and later both assessee and co-owner entered into a partition deed - In partition, assessee got excess land than co-owner - Assessing Officer was of view that such excess land received by assessee was an extra benefit and same was chargeable to tax under section 28(iv).

**Held**, such excess share of land will not be considered as ‘arising from business’

- Inference can be drawn from decision of **Pidilite Industries Ltd [2019] 107 taxmann.com 91 (Mum Trib)** where redemption/buyback of FCCB at discount where the FCCBs which were used for capitalization programs, was considered as ‘capital receipt’ and this is also another reason for which it is not taxable u/s 28(iv)

## *Applicability... continues...*

### *Pauser:*

### *Example:*

- Company ABC dealing in Highly Technical Machinery. ABC sells the machine to customer XYZ who is going to use the machinery for his business. ABC charged Rs 500,000/- for Machine and following could be the scenarios:
  - Not charged anything towards training of staff of XYZ (free product training)
  - Training happens at location Outside India and hence, provided free tickets and stay for Training of one staff of XYZ

## *Applicability... continues...*

### *Pauser:*

### *Example:*

- Company ABC dealing in pharma goods arrange a conference at The Relax Resorts for its dealers. The Relax Resorts provides benefit or perquisite to ABC upon booking such conference.
  - E.g. It gives free access to casino or spa or Gym
  - E.g. It gives free pick up and drop from airport to resort
  - E.g. It provides complementary guide for sight seeing
  - E.g. It provides coupon for one day free use of Meeting Room

## *Applicability... continues...*

### Example:

Whether where assessee purchased shares of a non-related company at a price less than fair value as it was a loss making concern, no benefit arose to assessee which could be brought to tax –

The condition is that it should arise from the business or in the exercise of profession. There must be **a nexus between the business of the assessee and the benefit the assessee derived. Such investment cannot be said to be a benefit arising out of the business of the assessee.** Moreover, the **assessee is the purchaser of the shares as investment** and there is no incident that has taken place during the current accounting year which can be said to lead to any income accrued or arisen during the year.

From a reading of section 28(*iv*) and the corresponding amendment in section 2(24) it is clear that even when the assessee purchases goods or assets at a price lower than the market price, under whatever circumstances the same cannot be brought to tax under section 28(*iv*)

**95 taxmann.com 286 (Nagpur - Trib.)/[2018] 171 ITD 577**

Assistant Commissioner of Income Tax, Circle-4, Nagpur v Swiftsol (I) (P.) Ltd

## Applicable date and Threshold limit

- Applicable with effect from 01-07-2022
- The benefit or perquisite which has been provided on or before 30<sup>th</sup> June 2022, would not be subjected to tax deduction under section 194R of the Act. **(Circular – Question 10)**
- The threshold limit of Rs 20,000/- is for entire year. Accordingly, all benefit and perquisite from April 2022 to June 2022 will have to be considered for calculating threshold limit. **(Circular – Question 10)**

## Issue: - Timing of deduction

Section 194R(1) : ..... **before providing such benefit or perquisite**, ensure that **tax has been deducted**.....

*Proviso:*

Provided that in a case where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit or perquisite **shall, before releasing the benefit or perquisite**, ensure that **tax has been paid** in respect of the benefit or perquisite:

## ***Issues: - Timing of deduction..... continues....***

Example: A company agrees to provide foreign tours to its dealers/distributors who achieve the target. Following could be visualized as an independent milestone in this transaction:

- a) A provision is made in the accounts of the company for the estimated cost of foreign tours for those dealers who has met the criteria;
- b) Dealer/distributor intimates the foreign destination he wants to proceed to and date when he wants to do so;
- c) The Company makes payment to the tour operator and makes all books;
- d) The tickets are then given to respective dealer/distributor;
- e) Departure of dealer/distributor to a foreign destination

Deduction u/s 37 of the amount of provision made in accounts is allowable deduction. CIT vs Maharashtra Hybrid Seeds Co. Ltd – [2021] 133 taxmann.com 43 (Bombay HC).

**Provided in accounts  $\neq$  Providing to the resident recipient**

**TDS will be refunded if the benefit/perquisite is cancelled or not provided at the end?**



## Issues: - how to calculate and deduct tax

Manner of Discharging and Compliance requirements: [Circular 12 - Question 9]

### Deductor pays tax from his pocket:-

- 'gross up' the liability [*issue remains for circular reference*] 11.11% or 12.35%

### Part in Cash is not sufficient to cover TDS on entire benefit/perq:

- Collect amount from 'payee' and pay TDS
- Ask payee to pay **TDS amount** by way of advance tax and collect such challan along with declaration [declaration format is not specified as of now]
- 26Q return is updated to report such transaction [*Rule 31A sub rule 4(xvii) Income Tax Nineteenth Amendment Rule*]

Due Date of TDS Payment	TDS Return
7 <sup>th</sup> of subsequent month	Quarterly in Form 26Q

Cant apply for Lower Deduction Certificate u/s 197  
No 15G/15H u/s 197A



***Issues: - how to calculate and deduct tax.... continues....***

Scenario	Tax born by Deductor	Tax Born by Deductee
Cash element is sufficient to cover TDS on entire benefit/perquisite or it is not in 'kind'	<i>before providing (before releasing)</i>	<i>before providing (before releasing)</i>
Cash element is not sufficient to cover TDS on entire benefit/perquisite or its wholly in Kind	<i>before releasing</i>	<i>before releasing</i>

Lets Analyse further

**“benefit or perquisite”**

**Section 194R + Circular 12**

## Issues: - 'benefit or perquisite' not defined

- 'benefit or perquisite' is not defined u/s 194R
- 194R is not applicable on employer-employee relationship, can we use the meaning from Head-Salary?
- Can we take help of Section 115WB 'fringe benefit'?
- Term is not defined under the head PGBP. Do we need to rely only on the decisions pronounced w.r.t. Section under the head PGBP r.w.s. 28 (iv)

## Why Reference to Section 28(iv) ?

- The Memorandum to the Finance Bill, while giving background and rationale for proposing insertion of section 194R, refers to **'benefits or perquisites' which are taxable under section 28(iv)** of the Act which most of the time may not get reported in the return of income by the recipients.
- The enacted Section 194R does not make reference to benefits or perquisites taxable under section 28(iv) of the Act. Therefore, though the language under section 28(iv) of the Act and Section 194R of the Act is similar, there is an anomaly that whether an assessee should refer to provisions and judicial precedence in respect of section 28(iv) of the Act to analyse applicability of provisions of section 194R of the Act.

## Wordings of section 28(iv) and 194R

### Section 28

The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession"

**(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession.**

### Section 194R(1)

..... **any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession, .....**

## Circular 12 – Question 1

**Q1) Is it necessary that the person providing benefit or perquisite needs to check if the amount is taxable under section 28(iv) of the Act, before deducting tax under section 194R of the Act?**

**NO.**

The Deductor is not required to check whether the amount of benefit or perquisite that he is providing would be taxable in the hands of the recipient under clause (iv) of section 28 of the Act. The amount could be taxable under any other section like section 41(1) etc. Section 194R of the Act casts an obligation on the person responsible for providing any benefit or perquisite to a resident, to deduct tax at source @10%. There is no further requirement to check whether the amount is taxable in the hands of the recipient or under which section it is taxable.

In this regard it may be highlighted that in the context of section 195 of the Act it is a requirement to know whether the payment made by the deductor is income in the hands of the non-resident recipient as section 195 of the Act requires deduction on any other sum chargeable under the provisions of this Act at the rates in force. Thus there is requirement that deductor needs to verify if the **"sum is chargeable under the Income-tax Act"**. The term **"rate in force"** is defined in clause (37A) of section 2 of the Act and it allows benefit of agreement under section 90 or section 90A of the Act, if eligible, in determining the rate of tax at which the tax is to be deducted at source. Hence, there is further requirement of checking if the amount is taxable under tax treaty and if yes, at what rate. Such a requirement is not there in section 194R of the Act, **in the absence of these two terms** in this section. Hence, there is no requirement for deductor to verify whether the amount is taxable in the hands of the recipient or section under which it is taxable.

## ***Circular 12 – Question 1 ... continues....***

### **Pauser: -**

- **Can deductee claim the TDS Credit appearing in 26AS even if deductee doesn't consider the 'benefit or perquisite' as his/her income?**

My view: Yes, because as per Question 1, its clear that there are two separate things, one is TDS and another is whether such amount is to be considered as income in the hands of recipient. However, litigation can not be ruled out.

**Further, there is no corresponding amendment in Rule 37BA r.w.s. 199 as it was done for section 194N.**

- **Whether the Tax is born by Deductor, can the deductee still claim TDS credit appearing in 26AS?**

My view: Yes. Since, the TDS was born by Deductor, such TDS amount will be considered as Income u/s 5 in the hands of deductee. *(due to grossing up)*

- **If the Deductor doesn't claim the expenses of such 'benefit or perquisite' then can it avoid TDS deduction and filing TDS Returns?**

My view: No.

Not claiming expenses u/s 37 or otherwise will not absolve the liability to deduct tax and becoming assessee in default and attracting penal consequence including imprisonment.

*(refer section 201, 221, 271C, 276B/276BB, 278A)*

## *Circular 12 – Question 1 ... continues....*

**Pauser: -**

➤ **Waiver of Loan**

- Any waiver of loan will require TDS under section 194R of the Act even though it may not be taxable under section 28(iv) or 41 of the Act.
  - Where loan or trade balance itself is not recoverable (especially in cases where the borrower has filed for insolvency), recovering TDS may also pose a challenge.
- Share application money subsequently written back?
- Bad Debts written off if Unilateral/Bilateral?
- Redemption or buyback of FCCB at Discount is ‘benefit or perquisite’?



## Issues: - 'benefit or perquisite' in Cash is covered?

Proviso to Section 194R(1)

Provided that in a case where the benefit or perquisite, as the case may be, **is wholly in kind or partly in cash and partly in kind** but such part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit or perquisite shall, before releasing the benefit or perquisite, ensure that tax has been paid in respect of the benefit or perquisite:

Whether the Proviso can extend the scope of main provision is debatable issue in itself.

## ***Issues: - 'benefit or perquisite' in Cash is covered? .... continues....***

- While interpreting the provisions of section 28(iv) of the Act, Hon'ble Apex Court in the case of **Commissioner v. Mahindra And Mahindra Ltd. (2018) 404 ITR 1 (SC)** has held in unequivocal terms that in order to invoke the provisions of section 28(iv) of the Income Tax Act, the benefit which is received has to be in some other form rather than in the shape of money. Therefore, in case where benefit or perquisite is in cash, the provisions of section 28(iv) are not attracted.
- Similarly CIT v Alchemic P. Ltd 1981 5 Taxman 55 (Guj HC) the benefit or perquisite in cash is not considered as taxable u/s 28(iv)
- If the benefit or perquisite is in money then it may anyways attract TDS under other provisions like 194C/194J/194H etc
- **Circular 12 – Question 2.** Is it necessary that the benefit or perquisite must be in kind for section 194R of the Act to operate?

First proviso clearly indicates the intent of legislature that there could also be situations where benefit or perquisite is in cash or the benefit or perquisite is in kind or partly in cash and partly in kind. Thus, section 194R of the Act clearly brings in its scope the situation where the benefit or perquisite is in cash or in kind or partly in cash or partly in kind.

### ***Issues: - 194R vs 206AB/206AA***

206AA (1) Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive ***any sum or income or amount***, on which tax is deductible under Chapter XVIIB shall furnish his Permanent Account Number to the person responsible for deducting such tax , failing which tax shall be deducted at the higher of the following rates, namely:—

- (i) at the rate specified in the relevant provision of this Act; or
- (ii) at the rate or rates in force; or
- (iii) at the rate of twenty per cent:

206AB (1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be deducted at source under the provisions of Chapter XVIIB, other than section 192, 192A, 194B, 194BB, 194-IA, 194-IB, 194LBC, 194M or 194N on ***any sum or income or amount paid***, or payable or credited, by a person to a specified person, the tax shall be deducted at the higher of the following rates, namely:—

- (i) at twice the rate specified in the relevant provision of the Act; or
- (ii) at twice the rate or rates in force; or
- (iii) at the rate of five per cent

## ***Issues: - 194R vs 206AB/206AA..... Continues.....***

- Personal responsible for “**providing**” is different then person responsible for “**paying**”
- “benefit or perquisite” in CASH can be considered as paid. However “benefit or perquisite” in **KIND** can be considered as **paid**?
- H.H. Sri Rama Verma v. CIT [1991] 187 ITR 308 (SC) - It is observed that the context in which the expression 'sums paid by the assessee' has been used makes the Legislative intent clear that it refers to amount of money paid by the assessee as donation. The plain meaning of the words used in the section does not contemplate donations in kind. *(this is in context of some other section however inference can be taken from such decision)*
- Further, intent of **Circular 12 - Question 1** which says that whether it is an income of recipient or not, is not to be considered. However, Section 206AB uses the words ‘**income**’. Whether this clarification can be used for further interpretation and will that interpretation will be binding on department is altogether another aspect.

*Lets not stretch this further*

## Circular 12 – Question 3

**Q3) 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.**

As has been stated in response to question no 1, there is no requirement to check whether the perquisite or benefit is taxable in the hands of the recipient and the section under which it is taxable.

**Further, courts have held many benefits or perquisites to be taxable even though one can argue that they are in the nature of capital asset.** *Few Judgments have been given out of which, 3 decision are in reference of section 28(iv) ....why are they referring to decision of 28(iv) when they don't want assessee to refer ?????*

Thus, it can be seen that the asset given as benefit or perquisite may be capital asset in general sense of the term like car, land etc but in the hands of the recipient it is benefit or perquisite and has accordingly been held to be taxable. In any case, as stated earlier, the deductor is not required to check if the benefit or perquisite is taxable in the hands of recipient. Thus, the deductor is required to deduct tax under section 194R of the Act in all cases where benefit or perquisite (of whatever nature) is provided.

## Circular 12 – Question 4

### Q4) Whether sales discount, cash discount and rebates are benefit or perquisite?

Sales discounts, cash discount or rebates allowed to customers from the listed retail price represent lesser realization of the sale price itself. To that extent the purchase price is also reduced.

Logically these are also benefits though related to sales/purchase. Since TDS under section 194R of the Act is applicable on all forms of benefit/perquisite, tax is required to be deducted. However, it is seen that subjecting these to tax deduction would put seller to difficulty.

**To remove such difficulty** it is clarified that no tax is required to be deducted under section 194R of the Act on sales discount, cash discount and rebates allowed to customers.

## *Circular 12 – Question 4... continues....*



**Example: What if 2 quantity are given free along with 10 quantity? Is it still a benefit or perquisite? TDS will have to be done?**

Let us assume that the price of each item is Rs 12. In this case, the selling price for the seller would be Rs 120 for 12 items. For buyer, he has purchased 12 items at a price of 10. Just like seller, the purchase price for the buyer is Rs 120 for 12 items and he is expected to record so in his books. In such a situation, again there could be difficulty in applying section 194R provision.

Hence, **to remove difficulty it is clarified that on the above facts no tax is required to be deducted under section 194R of the Act.**

It is clarified that situation is different **when free samples are given and the above relaxation would not apply to a situation of free samples.**

## *Circular 12 – Question 4... continues....*

**Example: What if some other Product is given free along with sale of main goods? Is it still a benefit or perquisite? TDS is will have to be done?**

Answer Extract: This relaxation should not be extended to other benefits provided by the seller in connection with its sale. To illustrate, the following are some of the examples of benefits/perquisites on which tax is required to be deducted under section 194R of the Act (the list is not exhaustive):

- When a person gives incentives (other than discount, rebate) in the form of cash or kind such as car, TV, computers, gold coin, mobile phone etc.
- When a person sponsors a trip for the recipient and his/her relatives upon achieving certain Targets
- When a person provides free ticket for an event
- When a person gives medicine samples free to medical practitioners.

The above examples are **only illustrative**.

The relaxation provided from non-deduction of tax for sales discount and rebate is **only on those items and should not be extended to others**.



## *Circular 12 – Question 4... continues....*

### **Pauser:**

- Company Offers take any Garment Product worth Rs 10,000/- along with buying Shirt of Value Rs 100,000/-
- Company Offers Himalaya Baby Soap along with Baby Shampoo Bottle
- Company Offers Sauces Pouch free along with Pickle
- Company offers discount on achieving of a Target of Sale of particular goods.

Such quantitative discounts which are properly backed by invoice/credit/debit note etc should not attract 194R. However there are divergent views here.

Sales discount, cash discount and rebates are not defined so we will need to refer to general meaning which is used in common parlance or some other Act where such words are defined.

## *Circular 12 – Question 4... continues....*

### **Pauser:**

**Company offers 99% discount on particular goods to Customers?**

### **Example 1:**

The selling price of medicine to practitioner will be at discount of 99%. Company accepts cash as Sales invoices does not exceed Rs 2 Lacs as indicated u/s 269ST.

A Company makes the policy that if employee sells the medicine to doctors then such employee will get 1.5% incentive on the amount of medicines sold.

### **Example 2:**

Tally offers discounted selling price of software to Practicing Chartered Accountant. It still provides bonus or incentive to its employees on sales of such products to Practicing CAs.

*Circular 12 – Question 4... continues....*

## Lets understand who is ‘Deductee’

### Example 1:

Free medicine samples are provided to Dr Gopi Kishan who is employee of KDUB Hospitals Pvt Ltd.

**Answer:** KDUB Hospitals Pvt Ltd is the deductee.

### *Quote:*

The hospital may subsequently treat this benefit/perquisite as the perquisite given to its employees (if the person who used it is his employee) under section 17 of the Act and deduct tax under section 192 of the Act. In such a case it would be first taxable in the hands of the hospital and then allowed as deduction as salary expenditure.

Thus, ultimately the amount would get taxed in the hands of the employee and not in the hands of the hospital. Hospital can get credit of tax deducted under section 194R of the Act by furnishing its tax return. It is further clarified that the threshold of twenty thousand rupees in the second proviso to sub-section (I) of section 194R of the Act is also required to be seen with respect to the recipient entity.

### *Unquote:*

*Circular 12 – Question 4... continues....*

*Lets understand who is ‘Deductee’ ...continues...*

**Example 2:**

Free medicine samples are provided to Dr Gopi Kishan who is Consultant of KDUB Hospitals Pvt Ltd.

Answer:

Dr Gopi Kishan will be deductee or alternatively, KDUB Hospitals Pvt Ltd is the deductee and then KDUB Hospital can further deduct tax from Dr Gopi Kishan.

*Quote:*

Similarly, the tax is required to be deducted under section 194R of the Act 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

*Unquote:*

## *Circular 12 – Question 4... continues....*

*Lets understand who is ‘Deductee’ ...continues...*

**Pauser:**

**Benefit or perquisite is provided to KDUB Hospital Trust. Is it liable for TDS?**

**Thought A):** As per answer to Question 1, the deductor need not check if the amount is taxable u/s 28(iv) of the Act. However, as per ‘Section 194R(1)’, the liability arises only if the benefit or perquisite is arising from business or exercise of profession. Considering that Trust is not carrying any business or profession, No TDS liability arises.

**Thought B):** How can a deductor determine whether such Trust is engaged in business or not. So, conservative view is to deduct tax. Trust will need to claim the TDS Credit which will be a challenging task again.

**Another Point :**

Benefit or perquisite is provided to Government Hospital. Is it liable for TDS?

*Quote:*

The provision of section 194R of the Act shall not apply if the benefit or perquisite is being provided to a Government entity, like Government hospital, ***not carrying on business or profession.***

*Unquote:*

***Government Entity ??????***

*Circular 12 – Question 4... continues....*

*Lets understand who is ‘Deductee’ ...continues...*

**Example 2:**

Benefit/perquisite is provided to director/owner of a Company.

Answer:

Company will be the deductee. Perquisite u/s 17 will need to be analyzed further as indicated in earlier slide.

*Quote:*

It is further clarified that these benefits/perquisites may be 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. However, the tax is required to be deducted by the person in the name of recipient entity since the usage by owner/ director/ employee/ relative is by virtue of their relation with the recipient entity and in substance the benefit/perquisite has been provided by the person to the recipient entity.

*Unquote:*

## Circular 12 – Question 5

**Q5) How is the valuation of benefit/perquisite required to be carried out?**

Answer:

The valuation would be based on **fair market value** of the benefit or perquisite except in following cases:-

- (i) The benefit/perquisite provider has **purchased** the benefit/perquisite before providing it to the recipient. In that case the purchase price shall be the value for such benefit/perquisite.
- (ii) The 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.

It is further clarified that GST will not be included for the purposes of valuation of benefit/perquisite for TDS under section 194R of the Act.

## *Circular 12 – Question 5..... continues....*

**Pauser:**

**Example:**

1. Which price Manufacturing Company will consider?
  - a) price that it charges to ‘Super Stockist’ / ‘whole sellers’ or
  - b) Price of the product for its ultimate customers
2. Company payment term is 30 days and a customer pays the amount after 120 days. Is there any benefit or perquisite involved? How to value under Fair Market Value?
3. What if this customer is the related party?
4. Interest free intercompany borrowings will be taxable u/s 194R? How do you Value? Internal CUP or External CUP?
5. **Double Taxation???** Will the provider gets the deduction?
6. Providing Guarantee for loan to another Entity without any Guarantee fee?



## *Circular 12 – Question 5..... continues....*

**Pauser:**

**Example:**

6. Motor Car or Some other facility is provided to the Partner of the Firm. Is there any benefit or perquisite involved? How to value under Fair Market Value? Will the view be different for a Partner who is CA and holding COP?
7. Consulting Firm, accept the assignment of Internal Audit and offers the services of preparing personal tax computation of owner free cost Or Tax Consulting Firm, provides some free services to its client.
8. What about Referral' amount paid to any person? Section 194H-Commission, requires 'acting on behalf of another person'. So can section 194R gets triggered?
9. Can the recipient adopt different valuation while preparing his/her Tax Computation?
10. Can Valuation norms be challenged: As per section 116, PCCIT/CCIT/PCIT/CIT/CIT(A) is Income Tax Authority but ITAT, High Court and Supreme Court are not. CBDT's guidelines issued u/s 194R(2) can be challenged before ITAT, HC and SC.

## Circular 12 – Question 6

**Q6) 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?**

Answer:

Whether this is benefit or perquisite will depend upon the facts of the case. In case of benefit or perquisite being a product like car, mobile, outfit, cosmetics etc and 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/perquisite for the purposes of section 194R of the Act. However, if the product is retained then it will be in the nature of benefit/perquisite and tax is required to be deducted accordingly under section 194R of the Act.

## Circular 12 – Question 7

**Q7) Whether reimbursement of out of pocket expense incurred by service provider in the course of rendering service is benefit/perquisite?**

Answer Extract:

Any expenditure which is the liability of a person carrying out business or profession, if met by the other person is **in effect benefit/perquisite provided by the second person to the first person** in the course of business/profession.

Sometimes the invoice is obtained in the name of “Company X” and accordingly, if paid by the Consultant, is reimbursed by “X”.

In this case, since the expense paid by the consultant (for which reimbursement is made) is incurred wholly and exclusively for the purposes of rendering services to “X” and the invoice is in the name of “X”, then the reimbursement made by “X” being the service recipient will not be considered as benefit/perquisite for the purposes of section 194R of the Act.

If the invoice is not in the name of “X” and the payment is made by “X” directly or reimbursed, it is the benefit/perquisite provided by “X” to the consultant for which deduction is required to be made under section 194R of the Act.

## *Circular 12 – Question 7 ... continues....*

### **Pauser:**

- 1) The main service is falling under section 194C and tax is deducted on entire amount including reimbursement u/s 194C.

Will it be okay? Or Whether Section 194R attracts on the same and Deductor will be considered as assessee in default? (*Refer circular no 720 of 1995 – Payment is liable for tax deduction only under one section*)

- 2) Reliance Industries has contract with Air India for providing Aircraft and Crew members support. Reliance provides Stay and Food to each Crew while on the entire trip days.?

- 3) Those dealer who has sales over and above Rs 10 Crore will be eligible to take reimbursement of Hotel expenses upto amount of Rs 200,000/-. Dealer will raise Debit Note to for reimbursement. Hotel expenses invoice must be in the name of Company?

Following Judicial Precedents where TDS cannot be deducted on reimbursement of actual expenses:

- Zephyr Biomedicals v JCIT [2020] 122 taxmann.com 124 (Bom HC)
- PCIT v. National Health & Education Society 262 Taxman 240 (Bom HC)
- CIT v Zee Entertainment Enterprises Ltd [2018] 92 taxmann.com 30 (Bom HC)

## Circular 12 – Question 8

**Q8) If there is a dealer conference to educate the dealers about the products of the company - Is it benefit/perquisite?**

Answer :

The expenditure pertaining to dealer/business conference would not be considered as benefit/perquisite for the purposes of section 194R of the Act in a case where **dealer/business conference is held with the prime object to educate dealers/customers about any of the following or similar aspects:**

- (i) new product being launched
- (ii) discussion as to how the product is better than others
- (iii) obtaining orders from dealers/customers
- (iv) teaching sales techniques to dealers/customers
- (v) addressing queries of the dealers/customers
- (vi) reconciliation of accounts with dealers/customers

However, such conference must not be in the nature of **incentives/benefits** to select dealers/customers who have achieved particular targets.

## *Circular 12 – Question 8 ... continues...*

**What if there is a component of leisure or spa or free access to Casino etc is involved?**

Answer Extract:

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.

**Who will give attributable amount? How to compute?**

**How to justify that overstay was unavoidable?**

Cost of sight seeing etc will be considered as benefit/perquisite u/s 194R

## Pausers:

- Association providing free copies to the Authors or Contributors of the book/report and such individuals are practicing or having business?
- Institute provides the facility of Kiosk to its members free of cost in upcoming event for promoting Indian consultant to get work of UAE where Corporate Tax is getting introduced. Presume that the Cost of each Kiosk is more than Rs 20,000/-.
- Company grows business through MLM model. Particular Individual member is not actively doing business but based on target achieved by downstream persons, Individual is also eligible for a Foreign Tour or a Car or a Gift Voucher. Is TDS Applicable?
- I received the benefit or perquisite but I did not kept it with me but I given to others in the course of my business or profession. Then, can I claim deduction?

## Pausers:

- Where manufacturer provides certain benefit/perquisite to the distributor, out of which, distributor is required to mandatorily pass certain benefit/perquisite to wholesaler. Who would be liable to deduct tax from wholesaler? Whether the manufacturer who is principally providing the benefit/perquisite? or the distributor who is in direct contact with the wholesaler and provides benefit/perquisite to the wholesaler?
- Further, whether the manufacturer is required to deduct tax on the aggregate value of benefit/perquisite provided to the distributor or only on value of benefit/perquisite which the distributor can retain with it. If conservatively the Company deduct tax u/s 194R on such benefit which are meant to be passed over to wholesaler or retailer then in that case, there would be issue of taxability in the hands of distributor or issue of credit of TDS in the hands of distributor as that is not the income/benefit accrued to him.



# *Interplay with GST*

## *Interplay with GST*

Its too early to discuss the GST implications on the same:

- (i) If the invoice for Supply of Goods or Service is raised for a particular transaction then GST implication will get studied automatically.
- (ii) The provider of benefit or perquisite should be able to claim the ITC on such tax invoice subject to fulfillment of all required conditions under GST law.
- (iii) Whether each benefit or perquisite is 'supply' under GST?
- (iv) Can the 'benefit or perquisite' received by person be said as 'consideration' towards the principal business activity. If yes, whether GST can be levied on such benefits which CANNOT be attributable to a specific supply but the business activity as a whole?

## *Interplay with GST*

Pauser:

Example: Company A is cash rich and provides interest free loan to its Group Company B.

- Whether GST applies on something which is not supplied?
- Whether Company A&B needs to amend GST registration to consider such SAC Code?

# THANK YOU

For any Query, Information or Support  
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