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INCOME TAX UPDATE

SECTION 194R

SECTION 194R...

- Section 194R has been introduced by Finance Act, 2022
- The said provisions are applicable from 1st July, 2022
- As per provisions of this Section,
 - A person responsible for providing to a resident,
 - Any benefit or perquisite, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident
 - Shall before providing such benefit or perquisite deduct tax @ 10% in respect of such benefit or perquisite.

...SECTION 194R

- No tax to be deducted
 - If aggregate value of the benefit or perquisite to a resident does not exceed INR 20,000/- during financial year
 - In case of an individual or a HUF, whose turnover does not exceed INR 1 crore in case of business or INR 50 lakh in case of profession, during the financial year immediately preceding the financial year in which such benefit or perquisite is provided by such person.
- To remove difficulties in implementing the provisions of section 194R, the Central Board of Direct Taxes ('CBDT') has issued guidelines vide Circular No. 12 of 2022
- We have summarized key issues covered by the aforesaid guidelines in the next slides.

GUIDELINES...

1. No need to check taxability in the hands of the recipient

- Section 194R casts an obligation on the person responsible for providing any benefit or perquisite to a resident, to deduct tax at source.
- No further requirement to check whether the amount is taxable in the hands of the recipient or under which section it is taxable.

2. Provision applicable even if benefit or perquisite is paid in cash

- There is no requirement that the benefit or perquisite must be in kind for section 194R to operate.
- The provisions of section 194R attract in all situations viz. where the benefit or perquisite is in cash, or in kind or partly in cash and partly in kind.

3. Capital assets also covered

- Many courts have held that benefits or perquisites are taxable even though they are in the nature of capital asset.
- Accordingly, capital asset like cars, land, etc. given as benefit or perquisite would be covered within the ambit of deduction of tax at source under section 194R.

...GUIDELINES...

4. Sales discount, cash discount, and rebates

- No tax is required to be deducted under section 194R on sales discounts, cash discounts, and rebates allowed to customers.
- Free samples would be covered by the aforesaid provisions.

5. Government entities are exempted

- The provision of section 194R shall not apply if the benefit or perquisite is being provided to a Government entity that is not carrying on business or profession.

6. Valuation of benefit / perquisite

- Valuation of benefit/perquisite shall be based on fair market value of the benefit or perquisite.
- Where deductor has purchased the benefit/perquisite before providing it to the recipient, the purchase price shall be the value for such benefit/perquisite.
- Where the deductor manufactures such items, then the price that it charges to its customers for such items shall be the value for such benefit/perquisite.
- GST to be excluded from the valuation for the aforesaid provisions

...GUIDELINES...

7. TDS on reimbursement cost incurred by service provider

- CBDT has stated that the expenses incurred by service provider while rendering service is part of his business expenditure and deductible while computing total income. Thus, if any expenses incurred by service provider are met by service recipient, then the same shall be treated as benefit or perquisite.
- However, if the invoice has been obtained in name of service recipient, then the reimbursement made by service recipient will not be considered as benefit/perquisite for the purposes of section 194R.

8. Dealer conference – whether benefit/perquisite?

- Not a benefit where the prime object is to educate the dealers / customers.
- However, such conference should not be in the nature of incentives / benefits to select dealers who have achieved targets.
- Following expenditure would be considered as benefit or perquisite:

...GUIDELINES...

- Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer/business conference.
- Expenditure incurred for family members accompanying the person attending dealer/business conference.
- Expenditure on participants of dealer/business conference for days which are on account of prior stay or overstay beyond the dates of such conference.

9. How to ensure that tax has been duly paid in respect of benefit or perquisite in kind or party in cash and partly in kind?

- Recipient has to pay tax in the form of advance tax
- Details of transactions to be reported in TDS Return along with challan number
- Form 26Q to include provision for reporting such transactions
- Tax may also be paid by the benefit provider. In this case, tax paid by him shall also be considered as benefit provided and provisions of Section 194R shall be applicable on the same.

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10. How to compute threshold limit for FY 2022-23?

- The provisions of the section are applicable with effect from 1st July, 2022.
- However, threshold limit of INR 20,000/- is with respect to financial year. Accordingly, calculation of aggregate value of perquisite or benefit triggering deduction 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.



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