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Section – 194R Deduction of tax on benefit or perquisite in respect of business or profession

- Any person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession, by such resident, shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that *tax has been deducted in respect of such benefit or perquisite at the rate of ten per cent of the value or aggregate of value of such benefit or perquisite:*

- **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 required to be deducted has been paid in respect of the benefit or perquisite:*

- **Provided further** that the provisions of this section shall not apply in case of a resident where *the value or aggregate of value of the benefit or perquisite provided or likely to be provided to such resident during the financial year does not exceed twenty thousand rupees:*

- **Non Applicability**

This section shall not apply to a person being-

- *an individual or*
- *a Hindu undivided family,*

whose total sales, gross receipts or turnover *does not exceed one crore rupees* in case of business or *fifty lakh rupees* in case of profession, during the financial year immediately preceding the financial year in which such benefit or perquisite, as the case may be, is provided by such person.

Explanation.—*For the purposes of this section, the expression "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.*

FAQs

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 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. . 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.

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

- ✓ Tax under section 194R of the Act is required to be deducted whether the benefit or perquisite is in cash or in kind.

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?*

- ✓ 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.

4) *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. 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.

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

- ✓ 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.

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?*

- ✓ 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.

7) *If under the terms of the agreement, the expense incurred by the service provider is the cost of service recipient and such cost is reimbursed by the service recipient to service provider, how is it benefit/perquisite if the bill is not in the name of service recipient?*

- ✓ It has been clarified that 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.

Now, if service provider incurs some expense in the course of rendering service to service recipient and the bill is in the name of service provider, then in substance (irrespective of the terms of the agreement) this expense is the liability of the service provider and not of service recipient. It is service provider who gets input credit of GST included in the expenses incurred by him. If it was the liability of the service recipient, then GST input credit would have been allowed to him (service recipient) and not to service provider. Hence, it is correctly clarifying that in such a situation reimbursement of such an expense is benefit/perquisite on which tax is required to be deducted under section 194R of the Act.

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

- ✓ 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.

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.

9) *A person has provided service to a Company and out of pocket expenses are charged by him to the Company along with service fee in the same bill. Company deducts tax under section 194J of the Act on both service fee component as well as on out of pocket expense in accordance with this circular. Is there a noncompliance with the provision of section 194R of the Act?*

- ✓ If out of pocket expenses (reimbursement) are already part of the consideration in the bill on which tax is deducted under the relevant provisions of the Act, other than section 194R, in accordance with the Circular No 715 dated 8th August 1995, it is clarified that there will not be further liability for tax deduction under section 194R of the Act.

10) *Whether issuance of bonus share/right share is a benefit or perquisite if issued by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act and whether tax is required to be deducted under section 194R of the Act?*

- ✓ In case of bonus shares which are issued to all shareholders by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act, it has been represented that this does not result in any benefit to shareholders as the overall value and ownership of their holding does not change. Further cost of acquisition of bonus share is taken as nil for capital gains computation when this share is sold. Similar representations have been received seeking clarity on issuance of right shares.

It is clarified that the tax under section 194R of the Act is not required to be deducted on issuance of bonus or right shares by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company, as the case may be.

Summary of Section 194R

Following are not treated as benefit or perquisite

- ✓ Sales Discount, Cash Discount and Rebate
- ✓ Buy 10 Get 1 free offers etc.
- ✓ Waiver of loan by bank/financial institution.
- ✓ Issue of Bonus Shares.
- ✓ Reimbursement of out of pocket expenses/Reimbursement of expenses to pure agent.
- ✓ Product given to social media influencer for doing promotion (if product is returned by influencer)

Special Point regarding dealer/business conference

Expenses (travel, stay, food etc.) incurred by company relating to dealer/business conference is not treated as benefit or perquisite. However following expenses are treated as benefit or perquisite and liable for TDS u/s 194R:

- ✓ Expenses relating to leisure trip or leisure component.
- ✓ Expenses on Overstay (One day before and one day after conference date is not treated as overstay)
- ✓ Any family member expenses of dealer.

Value of benefit/perquisite in kind

- Purchased by provider - ***Purchase Price***
- Manufactured by provider - ***Price that provider charges from its customers***
- Other Case- ***Fair Market Value***