

TAXATION TIMES

August 2022



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Introduction

In recent times the provisions related to TDS has become tedious!! The government is taking initiatives to bring a wider taxbase & as a result increasing the provisions relating to TDS. Recently, the government has introduced section 194R - in this edition of Taxation Times, we decode the newly inserted section under TDS namely Section 194R.

Here's what we have for you in this edition :

1. An article encompassing the brief provisions of Section 194R;
2. Case Laws from various courts & jurisdictions
3. Tax Compliance Calendar - September 2022;
4. Circulars & Notifications - August 2022

We hope that you find this month's edition of the Taxation Times useful. In case you have any feedback or need us to include any information to make this issue more informative, please feel free to write to us at info@uja.in

Happy Reading!
Best Regards,
UJA Tax Team



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Section 194R TDS or Tedious?

In order to increase the taxbase & to bring a larger number of assessee's under the tax net, the government has inserted a new section 194R in the Income-tax Act, 1961 ('Act') through the Finance Act, 2022, effective July 1, 2022¹

Section 194R mandates a person to withhold tax at source ('TDS') at 10% on providing any benefit or perquisite, whether in cash or kind, to a resident arising during the course of business and profession.

The liability to deduct TDS arises when the aggregate value of benefit/perquisite provided/likely to be provided during the financial year ('FY') exceeds INR 20,000/-.

However, the provisions of this section does not apply to an individual/ Hindu Undivided Family ('HUF') whose total sales/receipts/turnover from the business does not exceed INR 1 crore or from profession does not exceed INR 50 lacs in the immediately preceding FY or If the aggregate value of the benefit or perquisite provided or likely to be provided to the resident during the financial year does not exceed Rs. 20,000/-

The Central Board of Direct Taxes ('CBDT') vide circular dated June 16, 2022² has issued certain guidelines in this regard :

- I. The Deductor is not required to check the taxability of perquisites or benefits in hand of the recipient.
- II The benefit/perquisite can be in the form of cash or kind;
- III Any sales discount, cash discount, or rebate on the sale of any product, shall not form part of the perquisite or benefit

& consequently, section 194R would not apply in that case.

- IV. The FMV of perquisites or benefits in kind shall be used to value them. However,
 - a. If such perquisite/benefit is purchased by the deductor, the purchase price shall be the value of such benefit/perquisite
 - b. If the deductor is manufacturer of such benefit/perquisite, the price charged to it's customers shall be the value of such benefit/perquisite.

Goods & Service Tax ('GST') will not be included for the purposes of valuation of benefit/perquisite for TDS under section 194R of the Act.

- V. If a sample copy of a product is given to social media influencers for the purpose of shooting and that product is duly returned to the Deductor after giving his services, then there would be no TDS liability. Whereas, after services, if products are kept with influencers, then TDS under section 194R would be deducted.
- VI. Reimbursement of out-of-pocket expenses to a service provider would be considered a perquisite/r benefit. and TDS under section 194R would be required to be withheld. However, if invoices for such expenses are in the name of the deductor it self, then TDS is not required to be deducted.
- VII. If perquisites or benefits are in kind, the deductor shall take a declaration and a copy of the corresponding advance tax challan from the recipient. The Deductor must report the challan number while filing his TDS return.
- VIII. The limit of INR 20,000 has to be calculated from April 1, 2022, and the liability to with hold the tax would arise only on the transactions that accrued after July 1, 2022.

Section 194R TDS or Tedious?

Compliance:

- I. The deductor has to pay the TDS so deducted under section 194R to the credit of the Central Government by the 7th Day of the next month.
- II. Particulars of TDS deducted, deductee details etc. to be provided in Form 26Q which is to be filed quarterly.

Illustrations:

For better understanding on the applicability of section 194R, please see below a few illustrations:

- I. Mr. X runs a trading business in the garment industry. He provides various incentives to its agents to boost sale targets. During FY 2022-23, Mr. X provides free tickets for an event to Mr. A- its resident agent with the highest turnover. Does this benefit/perquisite come under the purview of section 194R?

Answer: - Yes. There is a benefit/perquisite (free tickets for an event) provided by a person (Mr. X) to a resident (Mr. A) on account of business or exercise of profession carried on by such resident. Therefore, it can be concluded that the benefit provided to him is on account of business or exercise of profession by Mr. A to Mr. X.

- II. Company XYZ is a trader in the automobile industry that manufacturers and sells motor vehicles. It has recently launched an electric vehicle. It provides a free test drive to its prospective customers. Does this benefit/perquisite come under the purview of section 194R?

Answer: - No. Free test drive does not arise on account of business or exercise of profession. The customers are end consumers of the motor vehicle and do not

engage in any business or profession to avail such benefit. Therefore, any benefit provided to end consumers do not fall under purview of 194R.

- III. Company ABC is a pharmaceutical company. It has administered a new drug and to obtain recognition it distributes free samples to Dr. S a medical practitioner. Does this benefit/perquisite come under the purview of section 194R if:
Dr. S is an employee at XYZ Private Hospital. Dr. S is a consultant at XYZ Private Hospital.

Answer: -

Situation I - there are two tranches of benefits/perquisites provided.

Tranche A: Company ABC and XYZ Private Hospital = other than “employer-employee relationship”. Therefore, 194R is attracted.
Tranche B: XYZ Private Hospital and Dr. S = “employer-employee relationship”. Here section 192 is attracted instead of 194R.

Situation II - the two tranches of benefits/perquisites provided constitutes to other than “employer-employee relationship” only. Therefore, 194R is attracted to both tranches.

- IV. Ms. B is a social media influencer who promotes various brands to its followers. Company DEF is a luxurious handbag brand who wishes to market its product through influencer marketing. Company sends its handbags to Ms. B to promote the brand. What are the implications under section 194R?

Answer: - The nature of benefit provided by the company is wholly in kind (supply of handbags). Therefore, the implications are stated hereunder if: Handbags sent on return basis - No tax deduction u/s 194R.
Handbags are not sent on return basis - Tax deduction u/s 194R @10%.

V. Chargeability of Section 194R under various scenarios: -

| Value of benefit/ perquisite up to 01.04.2022 | Value of benefit/ perquisite from 01.07.2022 | Total value for FY 2022-23 | Value on which TDS charged @10% |
|---|--|----------------------------|--|
| Rs. 15,000/- | Rs. 18,000/- | Rs. 33,000/- | Rs. 13,000/- |
| Rs. 2,00,000/- | Rs. 15,000/- | Rs. 2,15,000/- | Rs. 15,000/- |
| Rs. 65,000/- | Nil | Rs. 65,000/- | No tax on benefits provided prior to 01.07.2022. |

VI. Mr. T is the auditor of Company DEF having branches all over India. As per assurance engagement, Mr. T travels to different cities to audit the branches. Mr. T incurs certain lodging and boarding expenditure that are later re-imbursed by Company DEF. What are the implications of section 194R?

| Name on Invoice | Expenditure paid By | Reimbursed by Company | Implications |
|-----------------|---------------------|-----------------------|------------------------------|
| Mr. T | Mr. T | Yes | Section 194R is Applicable |
| Mr. T | Company DEF | NA | Section 194R is Applicable |
| Company DEF | Mr. T | Yes | Section 194R not Applicable* |

*It is important to note that the expenditure that are re-imbursed are incurred wholly and exclusively to provide assurance services by Mr. T.

<https://incometaxindia.gov.in/communications/notification/notification-67-2022.pdf>
<https://incometaxindia.gov.in/communications/circular/circular-no-12-2022.pdf>

Case Laws

Kalyaniwalla & Mistry LLP V/s The Asst. Director of Income Tax, CPC, Bengaluru (ITA No. 287/Mum/2022 (A.Y. 2018-19)

Section: 36(1)(va) of the Income Tax Act, 1961

Facts: The assessee firm filed its return of income on 31.03.2018 for previous year 2017-2018 i.e. assessment year 2018-2019. The said return was processed under section 143(1) of the Act at the CPC, Bengaluru in which the adjustment of Rs. 2,82,985/- was made on account of deemed income under section 36(1)(va) of the Act of late deposit of employee's contribution to P.F. and E.S.I.

Against this intimation the assessee firm filed an appeal before CIT(A)-5, Mumbai. The CIT(A)(National Faceless Appeal Centre) also confirmed the above intimation under section 143(1).

Against this order the assessee firm filed an appeal before ITAT, Mumbai.

Issue: Whether late deposit of contribution towards P.F. and E.S.I. is allowed as deduction?

Held: The Hon. ITAT pursued the provisions of section 36(1)(va) of the Act, wherein it is held that amendment made by the Finance Act, 2021 to section 36(1)(va) and section 43B are prospective in nature, effective from assessment year 2022-2023.

Further the Hon. ITAT held that the assessing officer and the first appellant authority are duty bound to follow the decisions of the jurisdictional high courts otherwise it makes their decision unsustainable.

In Favour of: The Assessee

Microsoft Corporation (India) Private Limited V/s Additional CIT, National E-Assessment Centre, Delhi ITA No. 802/Del/2021 : Asstt. Year : 2016-17 (Delhi Trib)

Section: 37 of the Income Tax Act 1961

Facts: The assessee company has incurred an expenditure on account of advertisement, publicity and sales promotion expenses. Based on the Inter-Company Commission Agreement with Microsoft Operations Pte . Ltd . , Singapore ("MO") and License Agreement with Microsoft India Corporation , USA , the AO held that the above expenses incurred for efforts to make Microsoft USA's trademarks, service marks and trade names well known in India. The AO observed that the assessee company was a wholly owned subsidiary of Microsoft Corporation (USA) and was also advertising, publicizing and marketing Microsoft products and services in India. By undertaking such activities , the asses see apart from promoting Microsoft products is also building/promoting the brand of 'Microsoft' . The AO accordingly disallowed 50% of such expenditure as being capital in nature.

The assessee company had preferred an appeal before Hon. Dispute Resolution Panel(DRP) against the draft assessment order passed by the AO, the Hon. DRP also affirmed the said addition and the accordingly the AO had passed the final assessment order.

Against the final assessment order passed by the AO the assessee company had preferred an appeal before the Hon. ITAT.

Held: The Hon. ITAT held that the determination of ALP or the capitalization of 50% of advertising expenses on ad-hoc basis has no legal validity. The Ld. DRP distinguished the case laws relied upon by the assessee but could not substantiate by the way of any adjudication how the 50% of the expenses on account of advertisement, publicity and sales incurred by the assessee culminated in brand building and promotion of the Microsoft brand globally. In the absence of any tangible explanation or reasoning given in treating the advertisement expenses as capital as no corporeal asset has been created, we hold that no the expenses incurred cannot be treated as capital in nature.

In Favour of : The Assessee

**Ashok Leyland Ltd. V/s ACIT [2022] 141
taxmann.com 171 (Madras)**

**Section: 28(i) r.w.s 36(1)(iii) and 37(1) of the Income
Tax Act 1961 ('ITA')**

Facts: Assessee advanced certain amount on interest to one 'B' and after some years it had written off amount due from 'B' which had become irrecoverable and claimed deduction of same as business loss - Assessing Officer disallowed claim on ground that money lending and banking were not principal activities and that advances were transactions on capital account and, therefore, loss suffered by assessee was capital loss which was neither admissible under section 36(1)(iii) nor under section 37(1) - Commissioner (Appeals) confirmed order of Assessing Officer on premise that putting surplus money as inter corporate deposit for earning of interest could not be said to be incidental to business or during ordinary course of business - Tribunal held that loss incurred by assessee in respect of loan advanced to 'B' was in nature of capital loss and was not allowable under section 28.

Issue: Loss suffered by writing off sum advanced is to be treated as revenue loss or capital loss?

Held: Hon. High Court held that Where assessee advanced certain amount on interest to one 'B' and after some years it had written off amount due from 'B' which had become irrecoverable and claimed deduction of same as business loss, as said advance was not advanced in course of business of assessee, loss incurred by assessee was in nature of capital loss and was not allowable under section 28.

In Favour Of: Revenue

**Walvekar Brothers & Co. V/s The ITO 3(2), Pune ITA
No. 770/PUN/2018 : Assessment Year : 2013-14
(Pune Trib.) Dated 10.08.2022**

**Section: 205 r.w.s. 206(1C) of the Income Tax Act
1961 ('ITA')**

Facts: The assessee is a partnership firm engaged in the business of IMFL products including wines and beers for many liquor and beer manufacturing companies. The assessee firm supplies stock to retail wine and beer shops, permit rooms and clubs. The assessee firm filed its return of income for the relevant assessment year claiming the refund; which was selected for scrutiny under CASS and a notice under section 143(2) was issued. During the assessment proceedings the Ld. AO disallowed the credit of Tax Collected at Source which was deducted by one of the parties of the assessee firm as the same was not reflected in Form 26AS.

Aggrieved by the assessment order passed by the Ld. AO the assessee firm filed an appeal before Ld. CIT(A) which in turn uphold the assessment order. The assessee firm had preferred an appeal before the Hon. ITAT, Pune against the order passed by the Ld. CIT(A).

Issue: Whether credit of TDS/TCS not reflected in Form 26AS be claimed by the assessee if the same has been deducted by the deductor but not paid to the credit to the Government?

Held: Hon. ITAT held that tax was deducted at source by the party of the assessee firm which had failed to deposit the same to the credit of the Government. The Revenue has sufficient machinery to recover such amount of TDS deducted from the defaulting assessee but this is not the right way for the revenue to collect the tax again or debar genuine refund to the assessee who has already suffered taxation at source. Considering the judicial precedents, we set aside the order of the Id. CIT(A) and allow the appeal of the assessee. We direct the A.O to immediately refund the eligible refund amount to the assessee.

In Favour Of: The Assessee.

Circulars & Notifications August 2022

The CBDT issues circular regarding clarification on Form No 10AC (Conditions for grant of registration under sections 12AB, 10(23C), and 80G & Provisional registration/approval to be deemed as registration/approval)

https://incometaxindia.gov.in/communications/circular/circular_11_2022.pdf

The CBDT issues : Guidelines for removal of difficulties under sub-section (6) of section 194S of the Income-tax Act, 1961.

<https://incometaxindia.gov.in/communications/circular/circular-no-13-2022.pdf>

B. Notifications:

Reduction of time limit for verification of Income Tax Return (ITR) from within 120 days to 30 days of transmitting the data of ITR electronically

<https://incometaxindia.gov.in/communications/notification/notification-5-dated-29-7-2022.pdf>

Section 17(2) Of The Income-Tax Act, 1961 - Salaries - Perquisites - Documents To Be Furnished By Employee To Avail Covid-19 Tax Exemptions

https://incometaxindia.gov.in/communications/notification/notification_90_2022.pdf

Section 56 Of The Income-Tax Act, 1961 - Income From Other Sources - Chargeable As - Specified Forms To Be Furnished By An Individual To Claim Exemption Of Any Amount Received Towards Expenditure Incurred For Treatment Of Covid-19 Illness

https://incometaxindia.gov.in/communications/notification/notification_91_2022.pdf

Income-Tax (Twenty-Fourth Amendment) Rules, 2022 - Insertion Of Rule 17AA-Books of account to be maintained by the trust or institutions registered under section 12A/10(23C)

<https://incometaxindia.gov.in/communications/notification/notification-94-2022.pdf>

C. Press Release:

New record of over 72.42 lakh (7.24m) ITRs filed on a single day About 5.83 crore ITRs filed till 31st July, 2022.

<https://pib.gov.in/PressReleasePage.aspx?PRID=1847118>

Tax Compliances for September 2022

7 September 2022

Due date for deposit of Tax deducted/collected for the month of August, 2022.

14 September 2022

Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB & 194M in the month of July, 2022

15 September 2022

Second instalment of advance tax for the Assessment Year 2023-2024.

30 September 2022

Due date for filing of audit report under section 44AB for the assessment year 2022-23 in the case of a corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on October 31, 2022)

Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB & 194M for the month of August, 2022

Tax News from around the World



Tax revenues in Asia and the Pacific hit hard by the COVID-19 crisis

<https://www.oecd.org/tax/tax-policy/tax-revenues-in-asia-and-the-pacific-hit-hard-by-the-covid-19-crisis.htm>

New CbC Reporting Requirements to Apply in Kenya

<https://mnetax.com/new-cbc-reporting-requirements-to-apply-in-kenya-47328>

McDonald's to pay €1.25bn to settle French tax evasion case

https://www.business-standard.com/article/pti-stories/mcdonald-s-to-pay-france-1-3-billion-in-tax-fraud-case-122061601245_1.html#:~:text=McDonald's%20France%20and%20related%20companies,national%20financial%20prosecutor's%20office%20said.

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