



Section 194R

Section **194R** has been introduced in Finance Act 2022 and made **applicable** from **1st July, 2022**. It seeks to deduct tax at source (**TDS**) in case a person provides any benefit or perquisite in kind to a resident at the time of execution of a business transaction.

This new section 194R requires deduction of tax at source @ 10%, by any person, providing any benefit or perquisite, exceeding Rs. 20,000 in value, in a year, to a resident, arising from the business or profession of such resident and such benefit or perquisite is in the nature of income falling under section 28(iv) of the Income tax Act.

No tax is required to be deducted under section 194R on Trade discounts, cash discounts, and rebates allowed to customers.

Many courts have declared 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.

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.

Sec No	Nature of payment	Monetary limit for deduction	Payer (Person making payment)	Receiver	Rate
194 R	Benefit or perquisite provided in cash or Kind. (gifts, perks or benefits)	Above Rs. 20,000	Any person (Other Than Individual/HUF) And Individual/ HUF having Turnover above Rs.1,00,00,000 or professional Receipt's above Rs. 50,00,000. (i.e.. Resident or Non-Resident)	Resident Person	10%

Q&A

Question 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?

Answer: 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.

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

Answer: Tax under section 194R of the Act is required to be deducted whether the benefit or perquisite is in cash or in kind. In this regard it is important to draw attention to the first proviso to sub-section (1) of section 194R of the Act, which reads as under:

"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: "

This 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.**

Question 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?

Answer: Yes, the benefit or perquisite given as capital asset will be taxable in the hands of Recipient.

Question 4: Whether sales discount, cash discount and rebates are benefit or perquisite?

Answer: Sales discounts, cash discount or rebates allowed to customers are not covered under benefit or perquisite.

- 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.

However, 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.

Question 5. 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.

Question 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?

Answer: 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.

Question 7: Whether reimbursement of out-of-pocket expense incurred by service provider in the course of rendering service is benefit/perquisite?

Answer: Yes, if the invoices of expenses which is reimbursed by the service recipient to the service provider is in his name of the service provider, then it will be treated as benefit or perquisite provided to service provider, but if it is in the name of service recipient and the payment is made directly or indirectly by the service recipient the it will not be treated as perquisite or benefit.

Question 8: 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.

Question 9: Section 194R provides that if the benefit/perquisite is in kind or partly in kind (and cash is not sufficient to meet TDS) then the person responsible for providing such benefit or perquisite is required to ensure that tax required to be deducted has been paid in respect of the benefit or perquisite, before releasing the benefit or perquisite. How can such person be satisfied that tax has been deposited?

Answer: The requirement of law is that if a person is providing benefit in kind to a recipient and tax is required to be deducted under section 194R of the Act, the person is required to ensure that tax required to be deducted has been paid by the recipient. Such recipient would pay tax in the form of advance tax. The tax deductor may rely on a declaration along with a copy of the advance tax payment challan provided by the recipient confirming that the tax required to be deducted on the benefit/perquisite has been deposited. This would be then required to be reported in TDS return along with challan number. This year Form 26Q has included provisions for reporting such transactions.

In the alternative, as an option to remove difficulty if any, the benefit provider may deduct the tax under section 194R of the Act and pay to the Government. The tax should be deducted after taking into account the fact the tax paid by him as TDS is also a benefit under section 194R of the Act. In the Form 26Q he will need to show it as tax deducted on benefit provided.

Question 10. Section 194R would come into effect from the 1st July 2022. Second proviso to subsection (1) of section 194R of the Act provides that the provision of this section does not apply where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to a resident during the financial year does not exceed twenty thousand rupees. It is not clear how this limit of twenty thousand is to be computed for the Financial Year 2022-23?

Answer: It is hereby clarified that, -

(i) Since the threshold of twenty thousand rupees is with respect to the financial year, calculation of value or aggregate of value of the benefit or perquisite triggering deduction under section 194R of the Act shall be counted from 1st April, 2022. Hence, if the value or aggregate value of the benefit or perquisite provided or likely to be provided to a resident exceeds twenty thousand rupees during the financial year 2022-23 (including the period up to 30th June 2022), the provision of section 194R shall apply on any benefit or perquisite provided on or after 1st July 2022.

(ii) The benefit or perquisite which has been provided on or before 30th June 2022, would not be subjected to tax deduction under section 194R of the Act.

