

CBDT issues additional guidelines on Section 194R of the Income-tax Act, 1961 (the Act)

14 September 2022



Summary

The CBDT¹ had vide Circular No. 12 dated 16 June 2022, provided guidance for removal of difficulties being faced in implementation of Section 194R of the Act. Taking into account several representations received from various stakeholders, the CBDT has now issued additional guidelines on applicability of Section 194R of the Act.

The additional guidelines provide clarity on the following aspects: (i) Waiver of loan/one-time settlement (ii) Reimbursement of expenses (iii) Interplay of Section 194R with Section 194J and 194C of the Act (iv) Depreciation on car received as a benefit (v) Expenditure for dealer conference (vi) Liability of Embassy/High Commission to withhold tax (vii) Applicability on bonus/right shares issued by a company in which public are substantially interested.

Background

Finance Act, 2022 inserted withholding tax provisions to trace benefit/perquisite provided to residents, that arise from carrying on of business or exercising a profession, by such resident. As per section 194R of the Act, the provider of such benefit/perquisite is required to deduct tax at the rate of 10% if the aggregate value of such benefit/perquisite exceeds INR 20,000 during a FY².

Further, the CBDT has been empowered³ to issue guidelines for removal of difficulties in giving effect to this provision. In exercise of these powers, the CBDT had in the past issued guidelines⁴ to remove difficulties faced by taxpayers for application of Section 194R of Act.

Subsequently, stakeholders sought clarifications on various issues, including those emanating from these guidelines. Consequentially, the CBDT has now issued additional guidelines⁵ for removal of difficulties. It has been clarified that this Circular will not impact the taxability of income in the hands of the recipient which would be governed by the relevant provisions of the Act.

1 Central Board of Direct Taxes

2 Financial year

3 Section 194R(2) of the Act

4 Vide Circular No. 12 of 2022 dated 16 June 2022

5 Circular No 18 of 2022 dated 13 September 2022

Additional guidelines issued by CBDT

Sr. No.	Issue	Guidelines provided by CBDT
1	Whether bank is required to deduct tax under Section 194R in case of one-time settlement/waiver of loan?	<p>Tax is not required to be withheld under Section 194R in case of one-time settlement/waiver of loan only by the following:</p> <ul style="list-style-type: none"> (i) Public financial institutions (ii) Scheduled bank⁷ (iii) Cooperative bank⁸ (other than a primary agricultural credit society) (iv) Primary co-operative agricultural and rural development⁸ (v) State Financial Corporation⁹, or institution¹⁰ (vi) State Industrial Investment Corporation¹¹, engaged in the business of providing long-term finance for industrial projects (vii) Deposit taking non-banking financial company¹² and systemically important non-deposit taking non-banking financial company¹³ (viii) Public company engaged in providing long term finance for construction or purchase of houses in India for residential purpose¹⁴ (ix) Asset reconstruction companies¹⁵ <p>Tax treatment of such settlement/waiver in the hands of the person who is benefitted by such waiver/settlement will not be impacted by this clarification.</p>

6 As defined in section 2(72) of the Companies Act, 2013

7 As defined in clause (ii) of Explanation to 36(1)(viii) of the Act

8 As defined in Explanation to Section 80P(4) of the Act

9 Being a financial corporation established under section 3 or 3A of the State Financial Corporation Act, 1951

10 Notified under section 46 of the State Financial Corporation Act, 1951

11 As defined in the section 2(45) of the Companies Act 2013

12 As defined in clause (e) of the Explanation 4 to section 43B of the Act

13 As defined in clause (g) of the Explanation 4 to section 43B of the Act

14 and which is registered in accordance with the guidelines/direction issued by the National Housing Bank formed under National Housing Bank Act, 1987

15 Registered under section 3 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SRF AESI) Act, 2002

2	<p>If under the terms of agreement, the expense incurred by the service provider is the cost of service recipient, which is reimbursed to the service provider, how is it a benefit/perquisite if the bill is not in the name of service recipient?</p>	<p>Provisions of Section 194R would not apply in case the service provider satisfies the condition of being a 'pure agent'¹⁶ of service recipient and the expenses are reimbursed by service recipient.</p>
3	<p>Is there any requirement to deduct tax under Section 194R where the invoice contains both service fee and out of pocket expenses and tax has been deducted on these amounts under any section 194C/194J of the Act?</p>	<p>If out of pocket expense is part of the consideration in the bill for service fee and the tax is deducted under Section 194J/194C¹⁷ of the Act on the entire consideration (i.e., including amount of out of pocket expense), tax is not required to be deducted under Section 194R of the Act.</p>
4	<p>Issues pertaining to dealer conference to educate the dealers about the products of the company:</p> <p>(i) Is there any requirement that all dealers must be invited in the dealer/business conference for the expenses to be regarded as benefit/perquisite?</p> <p>(ii) What would be the treatment of expenditure incurred for overstay when dealers arrive one day before and leave one day after the conference?</p> <p>(iii) How to identify benefit against individual dealers in a group activity?</p>	<p>(i) It is not necessary that all dealers are required to be invited in dealer/business conference for the expenses to not to be regarded as benefit/perquisite for withholding tax purpose.</p> <p>(ii) Expenditure incurred for overstay would be considered as benefit/perquisite. However, a day immediately prior to actual start date of conference and a day immediately following the actual end date of conference would not be considered as overstay.</p> <p>(iii) In case where it is difficult to allocate the benefit/perquisite (using a reasonable allocation key) to each participant due to the fact that there is a group activity, then provider of benefit/perquisite may opt to not claim such benefit/perquisite as deductible expenditure while computing his taxable income. In such cases, the provider may not be required to withhold tax under Section 194R of the Act and the consequences for non-compliance would not be applicable.</p>

¹⁶ As defined in GST Valuation Rules, 2017

¹⁷ As per Circular No. 715 dated 8 August 1995

5	In case where company has gifted car to its dealer and deducted the tax under Section 194R of the Act, whether the dealer can claim depreciation on such car?	The dealer can claim the depreciation on car received as a gift provided tax has been deducted under Section 194R of the Act and the benefit/perquisite has been offered to tax (as benefit/perquisite) in the dealers return of income. In such case, the amount offered to tax by the dealer in his return of income will be regarded 'actual cost' of the car.
6	Whether Embassy/High Commissions are required to deduct tax on benefits/perquisites?	Tax is not required to be deducted on benefit/perquisite provided by: (i) Organisation in scope of the United Nations (Privileges and Immunity Act), 1947 (ii) International organisation ¹⁸ (iii) An embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state
7	Whether issuance of bonus share/right share by a company in which the public are substantially interested ¹⁹ is a benefit or perquisite and whether tax is required to be deducted under Section 194R of the Act?	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, where bonus shares or right shares are offered to all shareholders by such a company.

Our comments

These additional guidelines have surely provided clarity on some of the practical concerns raised by stakeholders in applying provisions of Section 194R of the Act and is a welcome step. However, clarity is still awaited on several other issues where challenges are being faced by taxpayers.

¹⁸ Organisation whose income is exempt under specific Act of Parliament (such as the Asian Development Bank Act 1966).

¹⁹ Defined in section 2(18) of the Act

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