



# Analysis of Section 194R New Avataar

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LOGO

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# The Finance Act 2022

- Objective of The Finance Act 2022:
  - To simply the tax system
  - To promote voluntary compliance by taxpayers.
  - To reduce litigation.

## Applicability of TDS provisions

- All Assessee (Except Individual and HUF)
- For Individual and HUF,
  - to whom provisions of section 44AB of the Income Tax Act, 1961 are applicable
  - 194M w.e.f.1<sup>st</sup> Sep 2019 - Other than those who are liable to deduct TDS u/s 194C/ 194H and 194J - where the aggregate sum paid during the year exceed Rs. 50 Lakhs – rate 5%
  - W.E.F. 1<sup>st</sup> April 2021 - For individuals and HUF, liability to deduct tax shall arise only when the turnover of such Individuals or HUF exceed Rs.1 Crore in case of business and Rs.50 Lakhs in case of profession in the FY immediately preceding the FY (if not audited under section 44AB of the Income Tax Act, 1961
  - If rent paid more than Rs. 50000/- per month.
  - In case of payment to NRI ie Rent, Purchase of Property, Professional fees etc

## New Section 194R – TDS on perquisite

FM Speech - the Finance Bill, 2022

It has been noticed that as a business promotion strategy, there is a tendency on businesses to pass on benefits to their agents. Such benefits are taxable in the hands of the agents. In order to track such transactions, I propose to provide for tax deduction by the person giving benefits, if the aggregate value of such benefits exceeds Rs.20000/- during the financial year.

## New Section 194R – TDS on perquisite

The Finance Act, 2022

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:

## New Section 194R – TDS on perquisite

The Finance Act, 2022

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 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:

Provided also that the provisions of this section shall not apply to a person being an individual or a Hindu undivided family, whose total

## New Section 194R – TDS on perquisite

The Finance Act, 2022

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.’.

Memo – Clause 58



## New Section 194R – TDS on perquisite

Inserted by the Finance Act, 2022 – w.e.f .01.07.2022

- Any person carrying on business or profession
- Providing to resident, any benefit or perquisite (whether in cash or in kind)
- Arising from business or in exercise of profession
- The tax shall be deducted at 10%
- To ensure tax has been paid before releasing the benefit of perquisite
- Not applicable –

Perquisite value is less than 20000/- during the Fin Yr

Individual and HUF – Turnover / gross receipt of immediate preceding Fin Yr :

Less than 1 crore in case of Business

Less than 50 lakh in case of Profession

## New Section 194R – TDS on perquisite

As Section 194R is a mirror image of Section 28(iv), jurisprudence on scope of Sec 28(iv) is relevant to understand scope of Sec 194R. In terms of settled jurisprudence, benefits will be taxable u/s 28(iv) only if they satisfy following conditions:-

- Benefits must have nexus with Business or profession of recipient and arise as a result of business relationship between parties.
- Benefits should be in addition to regular consideration, and
- Expression ‘whether convertible into money or not’ mean that benefits must be in kind. Accordingly, Cash benefit stand excluded from this provision.

Few examples of incentives:-

Credit Notes for post sales discounts – Not Applicable

Any Unconditional Benefits not arising out of business relationship – NA

Any Unconditional Benefits arising out of business relationship – Applicable

Non-cash benefits ie extra quantity of goods, overseas trips etc under scheme -  
Applicable

## Section 194R – Applicability

Deductor	Deductee	Turnover of Deductor (F.Y.)	Benefit or Perquisite Amount ( In ₹)	TDS Applicable or Not
Individual/HUF (Business)	Individual	2021-22 < ₹ 1 Crore 2022-23 < ₹ 2 Crore	₹ 20,000/-	Not Applicable, because turnover in last FY is ₹ 1 Crore
AOP/BOI/Company/Partnership Firm	Company	2021-22 < ₹ 1 Crore 2022-23 < ₹ 2 Crore	₹ 25,000/-	Applicable, because deductor is other than Individual & HUF
Partnership Firm	Individual	2021-22 < ₹ 1 Crore 2022-23 < ₹ 2 Crore	₹ 18,000/-	Not Applicable because Amount of Benefit & Perquisite is Less than ₹ 20,000/-
Individual (Professional)	Limited Liability Partnership	2021-22 = ₹ 51 Lakh 2022-23 < ₹ 1 Crore	₹ 25,000/-	Applicable because Turnover in last Year is more than ₹ 50 Lakh.
Partnership Firm	Individual (Non Resident)	2021-22 < ₹ 1 Crore 2022-23 < ₹ 2 Crore	₹ 28,000/-	Not Applicable because deductee is Non Resident

## Section 194R – Applicability

Deductor	Deductee	Turnover of Deductor (F.Y)	Benefit or Perquisite Amount ( In ₹)	TDS Applicable or Not
Individual/HUF (Business)	Company	2021-22 = ₹ 1.5 Cr 2022-23 < ₹ 2 Cr	₹ 25,000/-	Applicable, because turnover in last FY is ₹ 1.5 Crore
AOP/BOI/Company/Partnership Firm	Company	2021-22 < ₹ 1 Cr 2022-23 < ₹ 2 Cr	₹ 20,000/-	Not Applicable, because benefit is upto ₹ 20,000/-
Partnership Firm	Individual (Employee)	2021-22 < ₹ 1 Cr 2022-23 < ₹ 2 Cr	₹ 38,000/-	Not Applicable because relation between Deductor and Deductee is Employer and Employee.
Individual (Professional)	Limited Liability Partnership	2020-21 > ₹ 50 Lakh 2021-22 - Nil 2022-23 < ₹ 1Cr	₹ 25,000/-	Not Applicable because Turnover in last Year is not more than ₹ 50 Lakh.

### Summary

*For Turnover Limit we have to Check first that what is the status of Deductor, if deductor is Individual/HUF then we have to Check Turnover of Last Year not the Current Year. If Deductor is other than Individual or HUF then turnover doesn't Matter.*

## Section 194R – Calculation of Threshold Limit

Benefit or Perquisite provided till 30 <sup>th</sup> June, 2022	Benefit or Perquisite provided from 1 <sup>st</sup> July, 2022	TDS Deducted & Amount	Reason
₹ 8,000/-	₹ 12,000/-	No	Amount is not more than ₹ 20,000/-
₹ 25,000/-	₹ Nil	No	Amount after 1 <sup>st</sup> day of July, 2022 is Nil
₹ 1,25,000/-	₹ 10	Yes, on ₹10/-	Threshold Limit has been exhaust till June 30 <sup>th</sup> day of, 2022.
₹ 2,00,000/-	₹ 2,00,000/-	Yes, on ₹ 2 lac	Threshold Limit has been exhaust till June 30 <sup>th</sup> day of, 2022.
₹ 10,000/-	₹ 2,00,000/-	Yes, on ₹ 1.90 lac	Threshold Limit has been exhaust till June 30 was ₹ 10,000 and balance after June 2022.
₹ Nil	₹ 1,00,000/-	Yes, on ₹ 80,000/-	Till June 30, 2022, no any benefit & Perquisite has been provided so all threshold limit will be exhaust from July, 2022 onward.

## Section 194R – Circular No.12 & 18

Clarifications	Illustrative issues
<p>Withholding u/s 194R applies on benefit or perquisites provided regardless of:-</p> <ul style="list-style-type: none"> <li>➤ Chargeable to tax u/s28(iv)/41(1) or other provisions of ITA</li> <li>➤ Whether it is chargeable to tax or not</li> </ul> <p>Distinct from s.195 and comparable to S.196D/PILCOM ratio (FAQ 1)</p>	<ul style="list-style-type: none"> <li>➤ Conflict with express language of s.194R, intent as per Exp Memo and FM speech</li> </ul>
<p>S.194R also applies to monetary benefits</p> <ul style="list-style-type: none"> <li>➤ Proviso to S. 194R supports legislative intent to cover Cash benefits (FAQ2)</li> </ul>	<ul style="list-style-type: none"> <li>➤ Conflict with Mahindra &amp; Mahindra (404 ITR 1)</li> </ul>
<p>S.194R also applies to benefits in the form of a capital assets (FAQ3)</p>	<ul style="list-style-type: none"> <li>➤ Distinction between the form of capital assets vs. benefit received in course of acquisition of capital asset</li> </ul>
<p>194R is not applicable to sales discount, cash discount and Rebates –financial or quantitative But clarification not applicable to other benefits like car, TV, computer, gold coins, mobile phones, foreign trip, free ticket for event, free medicine samples (FAQ4)</p>	<ul style="list-style-type: none"> <li>➤ Free medicine samples – whose benefit / Perquisite?</li> </ul>

## Section 194R – Circular No.12 & 18

<p>Withholding u/s 194R in the name of recipient entity even if the benefit is “used” by owner / director/ employee or relative</p> <p>Threshold of INR 20,000 qua recipient entity</p> <p>Option to deduct directly in name of recipient consultant (FAQ4)</p>	<p>➤ Practical challenges of dual TDS obligations</p>
<p>s.194R not applicable when benefit /perquisite provided to government entities not carrying on business (FAQ4)</p>	<p>➤ Government protected withholding u/s 196 of ITA, whether or not carrying on business</p> <p>➤ Whether principle can be extended to other entities not carrying on business (e.g. charities)</p>
<p>Guidelines on valuation of benefit or perquisite (FAQ5)</p> <p>Value = FMV, expect</p> <p>❓ Purchase cost – If the provider has “purchased” the benefit / perquisite</p> <p>❓ Price to customers – If benefit / perquisite provided in the form of items manufactured by provider</p> <p>GST components to be excluded for determination of value</p>	<p>➤ FMV not defined in circular - S.2(22B) Definition applicable to capital asset</p> <p>“Purchase” may include service / facility as well GST to be excluded even if ITC is not available?</p>

## Section 194R – Sec 206AB

- Whether provisions of Sec. 206AB will be applicable to TDS U/s 194R ?

As per Section 206AB, “(1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be deducted at source under the provisions of Chapter XVIIB, other than section 192, 192A, 194B, 194BB, [194-IA, 194-IB, 194LBC, 194M or 194N] on any sum or income or amount paid, or payable or credited, by a person to a specified person, the tax shall be deducted at the higher of the following rates, namely”.

benefit or perquisite is only “provided”, not “paid or payable nor credited”

“person responsible for paying any sum or any income”, whereas section 194R states the word, “providing benefit or perquisite”

CBDT guideline is also silent on this



## Section 194R – Sec 40(a)(ia)

- Whether provisions of Section 40(a)(ia) of the act are applicable if benefit or perquisite provider has failed to deduct or deposit TDS U/s 194R ?

Section 40(a)(ia) of the act states that, “thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139”

under section 28(iv) and 194R word “sum payable” is nowhere used, the words used are only “benefit or perquisite provided”

If any benefit is in the form of money/cash/any sum of money, then in that case if TDS is not deducted then it will attract disallowance U/s. 40(a)(ia) of the act

## Section 194R – few doubts

- Being non-financial transaction, whether to be included in books of accounts of person providing benefit

Advisable to entered as business income U/s 28(iv), rather than directly offering as income under the computation of income. Directly in income ledger – not to be shown in party ledger

- Whether such benefit or perquisites to be added in turnover of 44AD/44ADA?

No, Sec. 44ADA states that 50% income is to be computed on total gross receipts. Benefit or perquisite is not a receipt nor turnover.

## Section 194R – few doubts

- How to pay TDS u/s 194R and how transactions u/s 194R to be shown in TDS return?

From 1st July 2022, there is separate code 94R inserted in challan 280.

Transaction covered under section 194R to be shown in form 26Q

If TDS deducted and paid by the person who providing benefit – select 94R

If benefit has been provided in kind and recipient has paid advance tax then it has to be reflected as advance tax paid by recipient – Select 94RP

- Whether Nil/lower deduction certificate can be availed u/s197

No

# Amendment in Section 201(1A) & 206C(7)- Interest

Inserted by the Finance Act, 2022 – w.e.f 01.04.2022

Presently any person liable to deduct tax who does not deduct or after deducting fails to pay the same, he shall be liable to pay

- simple interest @1% pm or part of the month in case of late deduction
- Simple interest @1.5% pm or part of the month in case of late deposit

Proposed to amend to provide that where any order has been made by the Assessing officer for default u/s 201(1), the interest shall be paid by the person in accordance with the order passed by the Assessing officer.

Similar provision are also inserted in Section 206C(7) – interest in case of late collection of TCS / late payment of TCS

*Thank You*

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