

New TDS Provision - Ease of Doing Business?

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IN

view of expanding ambit of TDS, Union Budget 2022-23 proposed to insert new section 194R in the Income Tax Act, 1961 to provide that the person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from carrying out of a business or exercising 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. President have given assent and the said section has been enacted w.e.f. 1st July, 22.

Following are the legal provisions:

Quote:

Section 194R:

194R. (1) 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:

Provided also that the provisions of 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.

(2) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

(3) Every guideline issued by the Board under sub-section (2) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person providing any such benefit or perquisite.

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.]

UNQUOTE :

Applicability:

1. To all persons other than Individual and HUF
2. To Individual and HUF having turnover / sales more than 1 crore or Rs. 50 Lacs in case of professional in F.Y. 2021-22

Rate:

TDS @ 10%, by any person, providing any benefit or perquisite, exceeding Rs. 20,000 in value, in a financial year, to a resident, arising from the business or profession of such resident and such benefit or perquisite is in the nature of income from profits and gains from Business or Profession.

Section 194R poses challenges for compliance team as there are various types of perquisites & benefits provided in the course of business to the partners with the objective of motivation for the growth of business.

While presenting the Union Budget, Hon. Finance Minister has mentioned in her Budget Speech

Quote:

Rationalizing TDS Provisions

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. 20,000 during the financial year.

"

Unquote:

Further, Budget MEMORANDUM EXPLAINING THE PROVISIONS IN THE FINANCE BILL, 2022 specifically provides clarifications that

Quote:

Accordingly, in order to widen and deepen the tax base, it is proposed to insert a new section 194R to the Act to provide that the person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from carrying out of a business or exercising 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. For the purpose of this section, the expression 'person responsible for providing' has been proposed to mean a person providing such benefit or perquisite or in case of a company, the company itself including the principal officer thereof.

Unquote:

As a matter of fact, in terms of existing provisions of Sec 28(iv) of the Income Tax Act, 1961, Income / Profit from Business includes the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is to be charged as business income in the hands of the recipient of such benefit or perquisite, but most of the times it was not reported as Income even though such benefits have been received.

Though Government has notified the effective date of implementation which is 1 st July, 2022 still Government is expected to release the exemption list as well as detailed clarifications in form of FAQ for the benefit of taxpayers.

There are number of challenges anticipated in complying the provisions otherwise there is a sword on the tax payers for disallowance of such expenditure, if TDS u/s 194R has not been deducted or proper records are not being maintained to demonstrate the beneficiary / recipient is below the limit of benefit / perquisite of Rs. 20,000/- p.a.

Further, it will have the accounting challenges. For Eg: Doctor receives the free samples of medicines from pharmaceutical manufacturer / supplier and such Pharmaceutical manufacturer / supplier deducts the tax u/s 194R, such doctor needs to maintain account for such medicines received and also account for the income received in kind / perquisites in the books of accounts and also maintain consumption records for booking of Expenditure and if such doctors provides such free samples to hospitals / any other person without any consideration, then such doctor also needs to deduct tax u/s 194R and the chain continues!

Professionals will have the challenges for maintaining books of accounts of such recipients.

It is a practice in the trade and industry to provide offers like

- Quantity Discount on achieving certain turnover, certain quantities are supplied free as a part of scheme, which is permitted under GST law, but have to consider as Income by the recipient.
- Incentive / bonus
- **"Buy One - Get One Free"**
- Combo Offer
- Domestic / Foreign Tours including Air tickets, Hotel, etc.
- Gift Coupons
- Gold Coins etc.

The above list is illustrative and not exhaustive. All such practices / schemes will have to be analyzed thread bear keeping in mind the provisions of sec 194R of Income Tax Act, 1961.

Trade and Industry, which requires to make lot of expenditure for business growth and promotion or in the course of keeping the relations with number of stake holders, such expenditure may be for purchase of goods not for trading but for distribution or certain expenditure is accounted as and when it is incurred and Accounts Department may not know the real beneficiary at the time of booking such expenditure and concern department in Trade and Industry make the expenditure / distribution, now if proper quantitative records are not maintained / list of beneficiaries along with PAN is not maintained, then such expenditure will be disallowed treating this as not in the course / furtherance of business as non-business expenditure and will be offered to Income tax. Moreover, since it will be considered as non- business expenditure, Input Tax Credit u/s 16 of CGST Act, 2017 also will not be eligible. In case PAN is not available, TDS needs to be deducted @ 20%.

It will definitely have a severe adverse impact on ease of doing business on following negative impact:

- It will be treated as income in the hands of beneficiary
- It will not be allowed as business expenditure u/s 40(ai) of Income Tax Act, 1961 if proper accounts are not maintained for details of beneficiary.
- No ITC under CGST law will be allowed in case of 2 above.

- It will be very difficult to keep the inventory of receipt and distribution of goods, if goods procured for free distribution or expenditure is accounted for some other beneficiaries since at the time of accounting of such expenditure details of beneficiaries may not be known.

Let's hope CBDT issues necessary clarification immediately providing exemption list and FAQs without losing the focus of **"Ease of Doing Business"**.

[The views expressed are strictly personal.]

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