

# Section 194R

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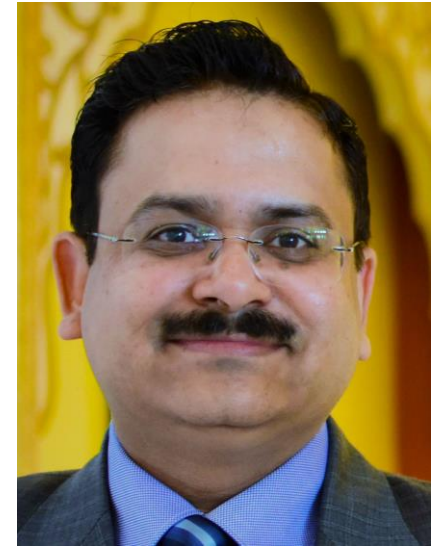


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# About CA. Deepak Bholusaria

- Mr. Deepak Bholusaria is a commerce graduate and fellow member of the Institute of Chartered Accountants of India.
- He has also completed various certificate courses of ICAI on Indirect taxes, Blockchain, Information Systems Audit and Valuation.
- A seasoned professional, author, speaker, public figure and YouTuber with 23+ years of experience.



# Section 194R

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# Bare provisions of 194R

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- 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

# 194R - Proviso

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.

# Analysis of 194R

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# What is 194R?

Section 194R provides for

- deduction of TDS
- by a person responsible for providing to a resident recipient
- any benefit or perquisite, whether convertible into money or not,
- arising from the business or exercise of profession by *such resident*,
- shall before providing such benefit or perquisite ensure that tax has been deducted
- at the rate of ten percent
- on the value or aggregate value of the benefit or perquisite provided by him.

# Conditions as to applicability of section 194R

1. There should be a person;
2. Such person should provide any benefit or perquisite;
3. Such benefit or perquisite should be either in cash or in kind or partly in cash and partly in kind;
4. The recipient of the benefit or perquisite should be resident in India under the Act;
5. Such benefit or perquisite should arise to the recipient resident from the carrying on of business or exercise of a profession;
6. The value or the aggregate value of benefit or perquisite provided or likely to be provided should be in excess of Rs. 20,000/-;
7. The benefit or perquisite should be provided on or after July 1, 2022.

- “**Person**” means a person as defined under clause (31) of the section 2 of the Act. The above definition is inclusive and not exhaustive. It means even the “person” who is not defined in above definition is still regarded as “person” for the purposes of the Act.
- Explanation to section 194R of the Act defines the expression “**person responsible for providing**” as the person providing such benefit or perquisite and in the case of the company, the company itself including the principal officer thereof.

What is a benefit?

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# Section 28(iv)

- 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.

However, in many cases, such recipient does not report the receipt of benefits in their return of income, leading to furnishing of incorrect particulars of income. This has triggered insertion of 194R.

# When to invoke 28(iv)?

The precondition to invoke sec 28(iv) are:

- a. The benefit or perquisite must arise from the business of an assessee.
- b. There must be a nexus between the business of an assessee and the benefit or perquisite sought to be taxed .

[Bhavnagar Bone & Fertilizer Co. Ltd. 166 ITR 316 \(Guj\)](#)

# Benefit or Perquisite

Neither the word “benefit” nor the word “perquisite” is defined under section 194R of the Act.

In the following decisions Courts have held that words which are not specifically defined must be taken in their legal sense or dictionary meaning or in popular or commercial sense as distinct from the scientific or technical meaning:

- CIT v/s. Benoykumar (32 ITR 466) (SC);
- State of Orissa v/s. Titaghar Paper Mills (1985 Tax LR 2948) (SC);
- CIT v/s. Taj Mahal Hotel (82 ITR 44) (SC)

# Settled law whereby benefit or perquisite held taxable as business income

- 1) The value of rent free residential accommodation provided by company to lawyer in consideration of his professional services (See Circular no. 20 dated July 7, 1964);
- 2) The director assessee of a private limited company undertook a foreign tour accompanied by his wife (*Nar Hari Dalmia (80 ITR 454)(Del)*);
- 3) Receipt of a car by the assessee from his disciple, who had been benefited from his preaching (*CIT (Addl) V. Ram Kripal Tripathi (125 ITR 408)(All)*);
- 4) Use of residential premises, car and telephone belonging to the firm:
- 5) Tax paid by the Indian company which was otherwise payable by the non-resident company which had rendered services



# Benefit not regarded as benefit or perquisite under section 28(iv)

1. **Ravinder Singh (205 ITR 353)(Del):** Where a firm allows the partner to use funds without paying interest
2. **Dilip Kumar Roy (94 ITR 1)(Bom):** Unsolicited and unexpected payments from a person with whom business connection has ceased and not by way of remuneration for past services, retainer or advance payment for future services or compensation for loss of business
3. **Bhavnagar Bone & Fertilizer Company Ltd. (166 ITR 316) (Guj):** Writing off the credit balance in the firm's account in the books of the company by transfer to the profit and loss appropriation account and then to capital reserve account
4. **Mahindra & Mahindra Ltd. (261 ITR 501)(Bom):** Waiver of part amount of principal amount of loan The High Court had distinguished the decision of the Supreme Court in CIT v. T.V. Sundaram Iyengar & Sons Ltd. (222 ITR 344).

# How to figure?

- From the above settled legal position it can be concluded that the question whether benefit or perquisite provided is benefit or perquisite arises from the carrying on of the business or exercises of the profession is factual one and requires analysis and there is no straight jacket formulae.
- Recently, the Board has issued Guidelines vide Circular No. 12 of 2022 on June 16, 2022

# CBDT Circular # 12

- Provider of the benefit or perquisite is not required to check whether the value of benefit or perquisite is taxable in the hands of recipient resident under section 28(iv) of the Act.
- Impliedly, the Board is of the view that all the above decisions wherein it was held that it is, and, it is not, assessable to tax in the hands of recipient assessee would though hold good for the purpose section 28(iv) *per se* *but* for the purposes of section 194R *such decisions are to be ignored* and the person responsible for providing benefit or perquisite is required to deduct the tax subject to fulfilment of the conditions given in the section.

# CBDT Circular # 12

- The Board further clarified that even if the amount is taxable under any other sections like section 41(1) the person responsible for providing benefit or perquisite is required to deduct tax under section 194R of the Act.
- Board requires us to check taxability under other provisions but not under section 28(iv).
- This is contrary to the objects and intent of section 194R
- Section 194R is applicable only when benefit or perquisite arises in the course of carrying on business or exercises of profession and not otherwise.

Whether a Board can travel beyond section 194R by way of Guidelines?

- The answer is clearly “no” as it is beyond the powers of the Board.
- Sub-section (1) of section 119 authorises the Board to issue order, instructions, etc. to other income tax authorities for the proper administration of the Act.

Jalgaon District Central Co-op. Bank Ltd. v. UOI (265 ITR 423) : Circular restricting the meaning of the word “member” of a co-operative society is not valid as circular cannot override the provisions of the Act.

East India Hotels Ltd. v. Shekhar Reddy (CR) (230 ITR 622): Power to issue clarification on ambiguous provisions lies only with the legislature or powers delegated by it under specified conditions

Cash or kind

Nexus

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# Benefit or perquisite should be in cash or kind?

- First proviso to sub-section (1) of section 194R provides that the benefit can be provided partly in cash and partly in kind.
- Thus, unlike section 28(iv), even benefit or perquisite provided in cash is covered under section 194R of the Act.
- This has also been clarified by the Board vide answer to question No. 2 of the Guidelines

- Section 194R provides that the benefit or perquisite provided by the person shall arise to the recipient resident from carrying on of his business or exercise of his profession.
- Thus, there should be nexus between the receipt of benefit or perquisite by the **recipient and his business or profession**.
- In various court decisions it has been held that for the purpose of section 28(iv) there should be direct nexus between benefit or perquisite
- The language, objects and intent of section 28(iv) and 194R are the same hence various decisions on section 28(iv) are equally applicable to section 194R.
- This aspect though inbuilt in section 194R of the Act has been negatively considered in the Guidelines.



# Valuation of perk

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# Value of benefit or perquisite

- The section is silent as to how the value of benefit or perquisite is to be calculated
- CBDT Circular:
  - **Fair Market Value.** FMV defined in section 2 (22B) talks about capital assets only.
  - Exceptions to FMV provided in circular:
    - ✓ Where the provider of benefit or perquisite has purchased such benefit or perquisite for a recipient resident then, in that case, the purchase price shall be treated as the value of benefit or perquisite; and,
    - ✓ in a case where the provider of benefit or perquisite is a manufacturer of such benefit or perquisite then, in that case, the price which such provider charges to its customer for such benefit or perquisite shall be treated as the value for the purpose of section 194R of the Act.

- CBDT Circular: GST to be excluded
- Circular is silent where FMV is not available

Eg: the land allotted or painting is provide to a professional person in consideration for the services rendered by him, where such land is located in a remote area where the ready reckoner value as well as market is not available.

# Value of benefit or perquisite

- In this kind of situation, one is required to ascertain the value of services rendered by such professional person against which the land/painting has been allotted to him for the purposes of section 194R of the Act.
- In other words, the value of what is provided in exchange of the value of services, the latter being considered as value of benefit or perquisite.
- Paragraph 24 of IND AS 16 on “property, Plant and equipment” provides that “if the acquired item is not measured at fair value, its cost is measured at the carrying amount of the assets given up”.
- Courts have held that commercial accounting principles should be considered in determining the tax consequences. AS issued by ICAI may also be considered.

- Where a person carried on business
- transferred the assets to a company
- in consideration of allotment of shares,
- it would be a case of exchange and not sale,
- and the true nature of the transfer will not be altered
- because for the purpose of stamp duty or other reasons
- the value of asset transferred is equivalent to the face value of shares allotted.

- Based on above, where the fair value of benefit or perquisite is not ascertainable then, in that case, the value of services/goods against which the benefit or perquisite would be provided shall be considered as the value for the purposes of section 194R of the Act.
- Where the value is not ascertainable then, in that case, based on the ratio laid down by the Apex Court in the following decisions, the provider is not obliged to deduct tax before providing the benefit or perquisite:
  - CIT v. B.C. Srinivasa Setty ( 128 ITR 294) (SC); and
  - CIT v. Sunil Siddharthbhai (156 ITR 509)(SC).

# Reimburesement

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- Any expenditure
- which is the liability of a person carrying out business or profession (*service provider*)
- if met by the other person (*service recipient*)
- is in effect benefit/perquisite
- provided by the second person (*service recipient*)
- to the first person (*service provider*) in the course of business/profession



- Reimbursement of expenditure shall not be treated as benefit or perquisite in the hands of the service provider (*deductee*) if the invoice with respect to reimbursement of expenditure is in the name of the service recipient (*deductor*).
- If the reimbursement expenditure invoice is not in the name of service recipient (*deductor*) then, in that case, it would be treated as benefit or perquisite in the hands of service provider (*deductee*).
- This is contrary to settled legal position that reimbursement without any mark-up will not be subject to any TDS as also contrary to the commercial accounting principles and section 119(1) of the Act.

# Reimbursement to employees

- One of the basic requirements to apply section 194R is that the benefit or perquisite should arise to the recipient resident in the course of carrying on of his business or exercise of his profession.
- Employee renders his services to the employer in the course of his employment, he is neither carrying on any business nor rendering any services in his capacity as a professional.
- As a consequence, reimbursement to employees is outside the scope of section 194R of the Act.
- Needless to add, benefit or perquisite to employees would be subject to the provisions of sections 15 to 17 and TDS thereon is dealt with under section 192 of the Act.

# Sales discount, cash discount and rebate

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# Sales discount, cash discount and rebate are benefit or perquisite?

## Q4 of CBDT Circular

- Sales discounts, cash discount or rebates allowed to customers from the listed retail price represent lesser realization of the sale price itself. To that extent purchase price of customer is also reduced
- Logically these are also benefits though related to sales/purchase. However, it is seen that subjecting these to tax deduction would put seller to difficulty, thus no deduction is required.

# Other perks

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# Other perks

Nature of Benefits or Perks	Applicability of TDS u/s 194R
Additional Quantities provided Free of Cost with the Basic Price (1 plus 1 or similar schemes)	Q#4: No TDS
Incentives in Cash or Kind given to Dealers, Distributors, Channel Partners based on Target	Subject to Deduction
Loyalty Rewards in cash (cash back)/ prepaid vouchers/ kind/ in the form of discount on future purchases	Subject to Deduction
Gifts based on quantities/ values/ timing of purchase (e.g. Early bird schemes)	Subject to Deduction
Incentives and Gifts such as Bags, Kits, Gold/Silver Coins, Watches, Mobile Phones etc. for Target Completion	Subject to Deduction
Incentives such as Free/Company Sponsored Entertainment Tours for Target Completion	Subject to Deduction
Insurance coverage for the dealer and his employees/ families	Subject to Deduction
Training to the sales personnel of the dealers/ distributors	Q#8: No TDS

# Other perks

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Nature of Benefits or Perks

Applicability of TDS  
u/s 194R

If the Social Media Influencer/Brand Ambassador/Artist retains with it the Benefit or Perquisite or Product like Car, Mobile, Outfit, Cosmetics etc, for which he is exercising his social media influence, and the said Benefits or Perks are not returned to Company

**Q#6:**  
Subject to  
deduction

Incentives in Cash or Kind given to any Director, Employee, Associate or Consultant of the RECEIPIENT entity by virtue of the REALATIONSHIP with recipient entity.

**Q#4:**  
Subject to  
deduction

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# Threshold & Applicability

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# Threshold & Applicability

- Applicable from July 1, 2022
- Threshold: Rs. 20,000
- *Circular:* Limit to start from April 1, 2022

Sl#	Period	Amount
1.	Benefits provided up to 30-06-2022	5,000
2.	Benefits provided on or after 01-07-2022 up to 31-03-2023	18,000
Deductible amount		3,000

Sl#	Period	Amount
1.	Benefits provided up to 30-06-2022	25,000
2.	Benefits provided on or after 01-07-2022 up to 31-03-2023	Nil
Deductible amount		Nil

# Important questions

- 1) Whether benefit or perquisite can be in cash?
- 2) Notional interest on the interest free loan to partner by the firm can be considered as benefit or perquisite?
- 3) Whether waiver of loan given by supplier can be considered as benefit or perquisite?
- 4) Who should be in business, whether payer or the payee or both?
- 5) Whether writing off of creditor will also benefit or perquisite.

# Important questions

- 6) How to calculate the tax when the TDS is also borne by the payer?
- 7) What if the receiver is not carried on business in the previous year.
- 8) Whether the benefits or perquisites is in goods only or whether it can be services also.?
- 9) Residential house given as gift. Whether this will fall u/s 194R? Since this is given without consideration, can it fall under 56(2)(x)? Do I need to deduct TDS u/s 194IA or 194R?
- 10) What if the benefits given in Crypto? Whether 194R will apply or 194S will apply.



# Open House

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**Thanks for your  
time!**

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# Contact us

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