

Solving the practical difficulties under section 194R

The CBDT vide Circular No. 18 of 2022 has addressed various issues that arose after the CBDT guidance through Circular No. 12 of 2022 on section 194R. Providing further clarity, we have summarized below key pointers of this guidance:

- It has been clarified that one-time loan settlement with borrowers or waiver of loan granted on reaching settlement by specified institutions with the borrowers would not be subjected to tax deduction at source under section 194R of the Act. Even though such settlement/waiver by banks may be an income to the borrower section 194R would not apply on such banks as this would require payment of tax by the bank in addition to receiving lesser than what was owed to him already.
- According to the GST valuation rules, if all the conditions of a pure agent are satisfied by the service provider, the GST input credit is allowed to the recipient, and it is not considered as supply of the pure agent. Accordingly, it is clarified that the amount incurred by a "pure agent" for which he is reimbursed by the recipient would not be treated as benefit/perquisite for the purpose of section 194R.
- If out of pocket expenses (reimbursement) are already part of the consideration in the bill on which tax is deducted under the relevant provisions of the Act, other than section 194R, it is clarified that there will not

be further liability for tax deduction under section 194R of the Act.

- According to the circular, all dealers are not required to be invited for the conference for the expense to not be considered as perquisite/benefit under section 194R. Further, expenditure on participants on account of overstay prior to the dates of conference or beyond such dates would be taxed under section 194R of the Act. 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. Further practical difficulties have also been removed as it is clarified that if benefit/perquisite is provided in a group activity which makes it difficult to match such benefit to each participant using a reasonable allocation key, the benefit/perquisite provider may at his option not claim the expense representing such benefit as deductible expenditure for calculating his total income. If he decides to opt so, he will not be required to deduct tax under section 194R. Thus, in such a case he must add back the expenditure, representing such benefit/perquisite, to calculate his total income if such expenditure is debited in the account.



- When a company has deducted tax on gifting of car in accordance with section 194R, and the dealer has included this benefit as income in his income tax return, it would be deemed that the "actual cost" of the car for the purposes of section 32 shall be the amount of benefit included by the dealer as income in his income-tax return. Hence, depreciation is allowable to the dealer.
- Provisions of section 194R are not applicable on benefit/perquisite provided by an organization in scope of The United Nations (Privileges and Immunity Act) 1947, an international organization whose income is exempt under specific Act of Parliament, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state.
- It is clarified that the 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 as defined in clause (18) of section 2 of the Act, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company, as the case may be.

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