



June 23, 2022

CBDT issued Guidelines for TDS on business related Benefits or Perquisites

Background

The Finance Act, 2022 had inserted a **new section 194R** in the Income-tax Act, 1961 applicable **with effect from July 1, 2022**, to provide for deduction of tax at source (TDS) on benefits/perquisites provided in respect of business or profession. Benefits/perquisites provided the employer to employees are not covered by section 194R. Such benefits/perquisites continue to be governed by salary provisions.

In this alert we have discussed the new TDS requirement and recently issued guidelines¹ by the CBDT.

Particulars	Details
Nature of Payment	Any benefit or perquisite provided in connection with business/profession
Threshold limit	Aggregate value of benefit/perquisite should exceed INR 20,000 in a year.
Payer (Person making Payment)	Any person If the Payer is an individual or Hindu Undivided Family (HUF), the gross turnover of business should exceed INR 10 million and in case of professional, receipts should exceed INR 5 million during the preceding financial year.
Payee (Receiver)	Any Resident person
Rate of TDS	10%

CBDT Guidelines

1. Clarification regarding nature of benefit/perquisites

TDS applies whether the benefit/perquisite are in cash or in kind and even if the benefit is a capital asset (like a car).

Further, payer is not required to check whether such benefit/perquisites are taxable in the hands of payer or not.

¹ CBDT Circular No. 12/2022 dated June 16, 2022.

2. TDS on Sales discount, cash discount and rebates

TDS does not apply on the amount of sales discount, cash discount or rebates allowed to customers and also when free units are given to customers (like 'Buy 1 Get 1 Free' schemes).

3. TDS on free samples etc.

TDS applies on benefits in the form of free samples, sponsoring a trip, free tickets, medicine samples etc.

4. Government entities are exempt

TDS shall not apply if the benefit/perquisite is being provided to a Government entity (like government hospital) that is not carrying on business or profession.

5. Valuation of benefit/perquisite

Value of benefit/perquisite should be the "Fair Market Value". However, in case the benefit/perquisite is purchased by the payer, then value will be the purchase price. While in case of manufacture, sale price will be the value of benefit/perquisite. GST will be excluded from the value of benefit/perquisite.

6. Products given to social media influencer

In case of products which are given by a payer to social media influencer, TDS will not apply if product is returned after using for the purpose of rendering service. However, if product is retained, then TDS will be applicable.

7. Reimbursement of cost incurred by service provider

TDS will apply on costs reimbursed to the service provider except if the expense invoice is in the name of the payer entity.

8. Dealer or Business conference

Any expenditure pertaining to dealer/business conference which is held for the prime objective to educate dealers/customer about new product launch, teaching sales technique and addressing query etc; is not considered as benefit/perquisite however, if expenditure pertains to leisure trip, leisure component, family members accompanying or prior stay or overstay beyond the dates of conference, then TDS will apply.

9. Benefit or perquisite is received wholly in kind

In case the benefit or perquisite received is in kind or party in kind and the cash is not sufficient to meet the requirement then recipient will pay the tax in form of advance tax.

10. Benefit or perquisite received by the employee of a payer entity

TDS will be applicable in the name of the employer if the benefit is given to employee or director of the payee entity.

11. Computation of limit of threshold

For computing threshold of INR 20,000, benefit/perquisite provided since April 1, 2022 will be considered. However, TDS apply only on those benefits/perquisites provided w.e.f July 1, 2022.

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