

Section 194R of the Income-tax Act – Some Interesting Points

*By Ashutosh Mahajan**

Finance Act, 2022 inserted a new section 194R in the Income-tax Act (Act) which is effective from 1 July 2022. Central Board of Direct Taxes (CBDT) issued a Circular (No. 12 of 2022) dated 16 June 2022 laying down guidelines for removal of difficulties in giving effect to the provisions of section 194R.

Below are some interesting points relating to this law and the circular:

1. These guidelines are required to be laid before each house of Parliament. These would be approved by both the houses of Parliament with assent of the President obtained to give this circular force of law. This will likely overcome the age-old principle settled in various Supreme Court decisions that circulars are binding on Revenue but not on the Tax Payers. It would be interesting to see how courts will handle disputes emanating from this circular.
2. Though the provider of benefit can be any person, but for the resident recipient, the benefit should arise from business or exercise of profession by the resident. Therefore, in business terms, this section mostly covers benefits or perks provided and received in a B2B scenario and not in a B2C scenario.
3. The deductor is not required to check whether the amount of benefit is taxable in the hands of recipient. However, in case deductor decides to bear the withholding tax himself, the benefit needs to be grossed up.
4. Out of pocket expenses incurred by the service provider are his business expenses and when reimbursed by the client, is a benefit provided by the client to the service provider. However, if the service provider takes invoice of such expense in the name of client but pays for the expense himself, and client later reimburses such amount, such reimbursement would not be considered a benefit to the service provider.
5. For benefit in kind, recipient to pay withholding tax in the form of advance tax and provide a copy of challan along with a declaration to the person providing such benefit evidencing the payment of withholding tax on such benefit.

6. Threshold of INR 20,000 to be computed considering the benefits provided since 1-4-2022, however, tax to be withheld only on the benefit provided effective 1-7-2022.

Conclusion

Though this law may be need of the hour as many benefits received in the course of business are out of tax net so far, however, compliance with this section would be much more complex and burdensome than other withholding tax provisions, especially now with the binding nature of clarifications given in the circular. Complexity will also depend on the size of business, the depth & breadth of distribution channel, and the number of innovative schemes in play to extend such benefits/perks etc. Most of these are unique to different industry segments and therefore, difficult to capture in initial circular. This may lead to difference of opinion in tax positions and hence litigation. Thankfully, sales discounts, cash discounts and rebates, which are the larger sums in any business, do not get covered within the preview of this section and therefore, there would not be a significant burden on cash flows. Overall, it appears that a large number of taxpayers will get hassled into difficult compliance for a much smaller benefit to the exchequer.

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