

President CA Ameet Chheda  
Vice President CA Jeenal Savla  
Secretary CA Vinit Gada  
Treasurer CA Harsh Dedhia  
Jt. Secretary CA Gautam Mota



Established 1973

**CVO Chartered & Cost Accountants' Association**

**28<sup>th</sup> June, 2022**

To,

**1. Smt. Nirmala Sitharaman,**

Hon'ble Finance Minister,  
Government of India,  
North Block,  
Delhi – 110 001

**2. Shri Tarun Bajaj**

Hon'ble Revenue Secretary,  
Central Board of Direct Taxes (CBDT),  
North Block,  
Delhi – 110 001

**3. Shri Nitin Gupta**

Hon'ble Chairman,  
Central Board of Direct Taxes,  
North Block,  
Delhi – 110 001

Respected Madam / Sir,

Sub: **Relaxation from applicability of provisions of Sec 194R from 1<sup>st</sup> July, 2022 and bringing in more clarity on various practical difficulties**

Ref: (i) **Section 194R of the Income-tax Act, 1961**  
(ii) **CBDT Circular no 12 of 2022 dated 16<sup>th</sup> June, 2022**

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- 1. About C.V.O. Chartered & Cost Accountants' Association**
  2. C.V.O. Chartered and Cost Accountants' Association (CVO CA) is a five decade old, non-profit professional organization established in 1973. It has acclaimed a premier position in society. Its objective is to disseminate knowledge in the field of Taxation, Accounting, Finance and Allied laws. It has membership strength of more than 1850+ members. Members of the Association have acclaimed respectable position in the CA practice and industry where they serve. It also organizes general public awareness program. One of the flagship programs is on Union Budget, which is organized in Gujarati Language for general public. The Association also publishes monthly Newsletter which is called 'CVO CA News & Views'. Besides these activities Association also supports needy students who

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are pursuing CA, CS & CWA by providing them financial assistance.

3. Our association regularly takes up initiatives to act as a bridge between our members and concerned regulatory bodies in order to convey genuine grievances and attempt to effectively implement the laws. This representation seeks to highlight the practical difficulties in applying the provisions of Sec 194R of the Income – tax Act, 1961 [“the Act”] and the Circular as referred above.
4. We are writing to you with regard to the recent **Circular no 12 of 2022 dated 16<sup>th</sup> June, 2022** (also referred to as '**Circular**') released by the CBDT in pursuance to the provisions of sub-section (2) to section 194R as Guidelines for removal of difficulties. The Guidelines provide clarity on various aspects to the taxpayers and would enable to comply with the provisions effectively. However, at some places the Circular lays down positions that does not seem to be provided in section 194R or that in the Memorandum explaining the amendment introduced by Finance Bill 2022. The Circular seeks to expand the provision of section 194R. Furthermore, at some instances (as discussed below) the Circular may end up creating more difficulties rather than removing the difficulties, if any, that may have been intended to have been addressed.
5. Considering the same we bring to your attention the key issues as emanating from the above Circular:
  1. **Taxability in the hands of the recipient is not to be seen:**
    - a. In response to Question No.1 of said Circular it is stated that there is no requirement to check whether the amount is taxable in the hands of the recipient or under which section it is taxable. However, the Memorandum explaining the provisions of the Finance Bill 2022 categorically required the deduction of tax at source under section 194R only in respect of those **Benefits or Perquisites which are in the nature of business income falling under section 28(iv) of the Income Tax Act**. However, the Circular expands the scope beyond what is envisaged by Memorandum. Further, the Circular requires tax deduction on items that may not be chargeable in the hands of recipient. The Circular by providing for tax withholding on a receipt which may not be an income seeks to go beyond the charging provisions of section 4(2) of the Act.
    - b. In this regard we draw your attention to the relevant extract of the Memorandum with regard to the introduction under section 194R, which is as under:

*"As per clause (iv) of section 28 of the Act, the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is to be charged"*

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*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....."*

- c. Thus, from above extract it can be clearly seen that the Memorandum has clearly spelt out that the provisions of section 194R are introduced to provide for tax withholding on the provision of benefits or perquisites taxable under the provisions of section 28(iv) of the Act. Therefore, the interpretations of the CBDT in Question No.1 as calling for withholding of tax on any benefit or perquisites whether taxable or not or for that whether taxable as business income or not is not in line. Further, implementation of the above guideline as contained in Question No. 1 may have widespread ramifications on implementation. The guideline will create more difficulties for taxpayer rather than removing difficulties, if any.
- d. **Representation: Considering the overall principle and position of law, the guideline contained in Question No. 1 of the Circular should be read down being contradictory to the provisions of the Act and contrary to the object referred to in Memorandum.**

**2. Only benefits in kind covered under by section 194R:**

- a. The Circular in Question No. 2 provides that section 194R will be applicable not only for benefits or perquisites which are wholly in kind but also for benefits or perquisites which are in cash or partly in cash and partly in kind. The Supreme Court in CIT v Mahindra & Mahindra Ltd. [2018] 404 ITR 1 (SC) has in context of section 28(iv) held that the phrase "*any benefit or perquisite, whether convertible into money or not*" covers only benefits in kind. The provisions of section 194R also apply the same phrase as applied and used in section 28(iv) of the Act. Thus, the principle as laid down by the Hon'ble Supreme Court in said case equally holds good for section 194R as well and should be unequivocally applied. Thus, following the decision of the Hon'ble Supreme Court in aforesaid case, the phrase "*any benefit or perquisite, whether convertible into money or not*" used in sub-section (1) to section 194R of the Act should be read as only covering benefits in kind and not the cash benefits. By virtue of Articles 141 and 144 of the Constitution, it is not open to the executive to override decision of Supreme Court unless there is an amendment to the Act. Section 194R-(2) permits CBDT to issue guidelines for the purpose of removing difficulty. An interpretation contrary to Supreme Court ruling is beyond the scope of delegated legislature.
- b. **Representation: It is requested to clarify that section 194R would not cover benefits/perquisites given in cash.**



**3. Waiver or write back off loan liability not a benefit – would lead to unintended to difficulties in the hands of the lenders as well as the borrowers:**

- a. It has been mentioned in Question No. 3 of the Circular that principal loan waived by bank under the one-time settlement scheme would constitute income falling under section 28(iv) relating to benefit or perquisite arising from business or exercise of profession. The CBDT relied upon the Hon'ble Madras High Court judgment in the case of CIT v. Ramaniyam Homes (P.) Ltd. [2016] 68 taxmann.com 289/239 Taxman 486/384 ITR 530 (Mad.) which has been reversed by Hon'ble Apex Court in the case Commissioner v. Mahindra & Mahindra Ltd. [2018] 93 taxmann.com 32/93 taxmann.com 32/404 ITR 1 (SC).
- b. Further providing that write back, or waiver of loan shall be construed as benefits or perquisites could pose serious problems in the hands of the entities involved in the proceedings under Insolvency and Bankruptcy Code (IBC). This would require lenders to treat the write-off / waiver offered to an insolvent entity as benefit and thereby warrant TDS withholding under section 194R. Notably the TDS to be deposited by the lender would be out of their own pockets and would cause more pressure on the finances of the lenders who already are facing troubles in recovering even the principal amount of the loan from the lender.
- c. **Representation: Considering the hardship that it may cause to the parties, it is submitted that relaxation should be provided from the applicability of the provision of section 194R of the Act to cases of loan waiver.**

**4. Meaning of the term “benefits” and “perquisites”:**

- a. The terms 'benefits' and 'perquisites' have not been separately defined for the purposes of Section 194R. These terms 'benefits' and 'perquisites' are of wider import and can cover wide range of things that are not even intended-off. Thus, absence of definition of the term "benefit" as well as "perquisites" would cause lot of difficulty in identifying what constitutes benefit or perquisite, further this shall create a lot of room for subjectivity to creep in and thereby leading to different positions being adopted and ultimately leading to manifold litigation on this matter. Illustratively, occasional lunch with the customer whether in the nature of benefit, interest free loan whether shall be construed as benefit, etc.

**b. Representation: Considering the ambiguity surrounding the interpretation of the terms**

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**'benefits' and/ or 'perquisites', it is submitted that appropriate definition should be provided for the purposes of section 194R.**

**5. Issue of credit notes, year-end discounts, etc. not in the nature of the benefit:**

- a. It is a common trade practice where due to varied reasons the supplier issues credit notes on the purchaser. Such credit notes may be issued say in cases where the product held by the dealer is expired, damaged, products does not match the quality or is defective, including on account of the product price undergoing change, etc. The credit note therefore redefines the contractual position between the parties for accounting the events that occur after sale.
- b. **Representation: It is therefore requested to issue appropriate clarification on the annual turnover discounts provided at the end of the year or credit notes issued for defective goods / rate differences. Whether this FAQ should be applied only at the time of sale, or it can be applied even in case of discount given after sale/ reduction of price after sale or on satisfaction of conditions?**
6. The physician samples provided to doctors are not for sale and that there is no benefit or perquisite. Accordingly, it is submitted that in absence of benefit or perquisite there shall be no TDS implication under section 194R of the Act.
7. For the social media influencers, it is necessary to avail services, or consume the products, to understand their utility and target audience. For instance, food blogger, travel blogger. Hence such free of cost use of facility for the purpose of marketing activities of social media influencers should not be treated as 'Benefit' or 'Perquisite'.
8. The Company provides the 'foreign trips' to its various distributors/dealers solely for the purpose of Business/Dealer Conference. To avoid any hustle on the scheduled day of the conference, the company arranges stay for dealers one day prior to the scheduled conference for their ease. It is requested to clarify that section 194R will not be applicable on such arrangement of the company under the ambit of phrase 'prior stay or overstay beyond the dates of such conference'.
9. The provision by company (including government companies) of its guest houses, holiday homes, training centres, etc., at concessional rates to its employees, directors, etc., shall be reckoned as benefit or perquisites in terms of provision of section 17 of the Act read with relevant rules of the Income-tax Rules, 1962, and would thereby be subject to withholding under section 192 of the Act. Similarly, the perquisites surrounding offer of

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employee stock options shall also be subject to withholding in section 192 of the Act. In light of this should it be safe to conclude that the provisions of section 194R shall not apply to such cases as are covered under section 192 of the Act and therefore the Question No. 3 of the Circular should be read down in so far as it deals with provision of benefits to directors, employees, etc.?

10. Section 194R does not contain guidance as to the point of time when tax has to be deducted. For instance, a company may give coupons to its customer with a validity of six months which can be used to purchase another item at a discount. In such a case, the customer may or may not redeem the coupon within the prescribed time.
11. Pursuant to the various schemes floated by the companies the customers are provided cashbacks, credit points on the use of the credit cards, air miles, etc. Can it be argued that the provision of these cashbacks, credit points, air miles, etc. are discounts that are passed onto the customer and therefore no TDS ought to be deducted under section 194R of the Act on provision of such cashbacks, credit points, air miles, etc.?
12. Further, in case of contingent rewards – group insurance policy taken by a company for its contractors – the reward would crystallize only on the happening of the contingent event. Whether the company is required to apply 194R at the time of paying premium to the insurance company?
13. In respect of dealer conferences, the Circular states that the benefit or perquisite would extend to expenditure attributable to leisure component even if it is incidental to the dealer / business conference. Determining 'leisure component of a dealer/business conference and then allocating it to individual dealers would present significant practical difficulties and subjectivities.
14. It has been mentioned in the circular that conference would be in the nature of incentive/benefit if it is provided to select dealers/customers who have achieved particular targets. However, it is practically not feasible to hold a conference for all the dealers. Hence it is requested to provide relaxation in situations where educational conferences are held for high performing dealers.
15. Presently under section 199 of the Act read with Rule 37BA of the Rules, the credit of the tax deducted at source is allowed only in the year in which the corresponding income is offered to tax. How shall this provision apply to the cases where the tax has been withheld under section 194R in respect of a benefit or perquisites that does not constitute income of the recipient?

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16. As per the Circular, any expenditure which is the liability of a person carrying out business or profession, if met by the other person is in effect benefit/perquisite provided by the second person to the first person in the course of business/profession. Thus, if a contractual obligation of one person is discharged by another person, then it becomes a perquisite. We agree with this proposition. However, in the end there is an example which mentions a situation wherein an invoice for an expense is in the name of service provider and not the service recipient. The service recipient is contractually obliged to make payment of these expenses. In this case, the service provider first makes the payment and gets reimbursement from the service recipient or the service recipient pays for the expense directly. However, since the invoice is in the name of service provider and not the service recipient, it has been opined in the Circular that there is a benefit provided by the service recipient to the service provider and TDS under section 194R would be applicable. As per our understanding, merely because the invoice is in the name of service provider should not alter the character of the expenses. So far as it is the contractual obligation of the service recipient to make payment of the expenses, it should not be treated as benefit/perquisite even if the invoice is in the name of service provider. It is requested to issue appropriate clarification that even if the invoice is in the name of service provider, it should not be treated as benefit/perquisite if the service recipient is contractually obliged to pay for the expenses.

We request you to look into this issue on a priority basis and take appropriate measures in this regard.

Thanking you,  
Sincerely,

**CA Ameet Chheda**  
**President**  
**CVO Chartered & Cost Accountant Association**

**CA Hetal Gada**  
**Convenor**  
**Publication & Representation Committee**

CC:

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