

NEWS FLASH**Withholding tax under Section 194R***16 June 2022*

The Finance Act, 2022 has inserted Section 194R in the Income-tax Act, 1961 ('the Act') which casts a tax withholding obligation at the rate of 10% on a person responsible for providing a benefit or perquisite ('the Provider') (exceeding INR 20,000 per FY), whether convertible into money or not. Such benefit or perquisite must be received by an Indian resident person ('the Recipient') arising from his/her business or profession. The extent and nuances of this provision have been intensely debated.

The said provision will be effective from 1 July 2022. Prior to its effective date, the Central Board of Direct Taxes ('CBDT') has issued Circular No. 12 of 2022 dated 16 June 2022 (the 'Circular') to provide guidelines for the removal of difficulties relating to the application of the Section.

The team at JMP Advisors is pleased to summarise below the key clarification provided in the Circular.

- Withholding of tax under section 194R of the Act to be made irrespective of the fact that such benefit or perquisite is capital in nature or is not taxable in the hands of the Recipient
- No withholding of tax is required on sales discounts, cash discounts or rebates allowed to customers
- Tax is required to be withheld in certain cases like:
 - Distribution of free samples
 - Sponsoring a trip for the Recipient and his/her relatives
 - Providing free tickets for an event, etc.
- The provision can create multiple withholding of taxes for a single benefit
- Reimbursement for out-of-pocket expenses by consultants not to attract tax withholding if the invoice of the third party is in the name of the Provider that appointed the consultant.
- The value of benefit or perquisite in the hands of the Recipient would be its fair market value, except in the following cases where the benefit or perquisite:
 - If purchased by the Provider – the purchase price of such benefit or perquisite; and
 - If manufactured by the Provider – the amount charged to the customer
- Expenditure relating to business conferences would not be treated as a benefit or perquisite, where such conferences are held with the prime object to:
 - Educate dealers/customers regarding new products or new features thereon, New sales techniques, etc;
 - Obtaining orders;
 - Addressing queries or reconciliation of accounts;
 - Not to provide benefits to select dealers who have achieved particular targets
- The following expenditure shall be treated as a benefit or perquisite:
 - Expenses related to leisure trips;
 - Expenses incurred for family members accompanying the Recipient in the business conference
 - Expenditure incurred for days preceding/subsequent to the dates of such conference
- Where the benefit or perquisite is provided either wholly or partly in kind (and cash is not sufficient to meet withholding), the Provider is required to withhold tax on a grossed-up basis and pay to the Government. Alternatively, the Provider can obtain proof of tax paid from the Recipient i.e. copy of advance tax challan. Appropriate disclosure to be made in the TDS return by the Provider

- The benefit or perquisite provided on or before 30 June 2022, would not be subjected to tax withholding. However, while computing the aggregate value of the benefit or perquisite provided during FY 2022-23, value of benefit or perquisite provided from 1 April 2022 to 30 June 2022 also to be included

JMP Insights: *This new provision has a far-reaching impact on the day-to-day transactions affecting businesses and has increased the compliance burden. Businesses will be required to carefully evaluate the incentive schemes, transactions, agreements and arrangements that may be regarded as a benefit or perquisite and trigger the withholding requirements.*

Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us at coe@jmpadvisors.in.

JMP Advisors Private Limited

12, Jolly Maker Chambers II, Nariman Point, Mumbai 400 021, India.
T: +91 22 22041666, E: info@jmpadvisors.in, W: www.jmpadvisors.com

Recognised as a leading firm in the ITR World Tax and Transfer Pricing 2022 Directory – yet again !

About JMP Advisors

JMP Advisors is a leading professional services firm that offers advisory, tax and regulatory services. The vision of JMP Advisors is to be 'The Most Admired Professional Services Firm in India'. It aims to be the best as measured by the quality of its people and service to clients. The firm has a merit based culture and operates to the highest standards of professionalism, ethics, and integrity. Jairaj (Jai) Purandare, the Founder Chairman has over three and a half decades of experience in tax and business advisory matters and is an authority on tax and regulation in India. Jai was Regional Managing Partner, Chairman - Tax and Country Leader - Markets & Industries of PricewaterhouseCoopers India. Earlier, Jai was Chairman of Ernst & Young India and Country Head of the Tax & Business Advisory practice of Andersen India.

JMP Advisors offers advice in international taxation, domestic taxation, transfer pricing, mergers and acquisitions, Goods and Services Tax (GST), business laws and exchange control regulations and foreign investment consulting. We specialize in fiscal strategy, policy foresight and advocacy matters and are also trusted advisors to high net worth families. Our team at JMP Advisors takes pride in being the best at what matters most to clients - technical expertise, innovative solutions, consistent, high quality service, reliability and ease of doing business.

JMP Advisors has been recognized as a leading Tax firm in India in the International Tax Review (Euromoney) World Tax Directory for all successive years since incorporation, including in the World Tax and Transfer Pricing 2022 Directory.

Disclaimer

This material and the information contained herein is of a general nature and is not intended to address specific issues of any person. Any person acting on the basis of this material or information shall do so solely at his own risk. JMP Advisors Private Limited shall not be liable for any loss whatsoever sustained by any person who relies on this material or information.