

## NEWS FLASH

### Withholding tax under Section 194R

15 September 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 ('the provider') for providing benefits or perquisites, whether convertible into money or not. Such benefits or perquisites must be received by an Indian resident person ('the recipient') from his/her business or profession. The said provision is 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 'First Circular') to provide guidelines for the removal of difficulties relating to the application of the Section. The extent and nuances of this provision as well as the First Circular have been intensely debated upon. In order to provide additional clarifications, the CBDT has issued Circular No. 18 of 2022 dated 13 September 2022 (the 'Second Circular').

The team at JMP Advisors is pleased to summarise below key points clarified in the Second Circular.

- Clarifications are provided for removing difficulties in implementation of the provisions of section 194R of the Act and it does not impact the taxability of the income in the hands of the recipient.
- The Second Circular provides guidelines in relation to specific situations / difficulties represented by taxpayers, which are summarised hereunder:

Sr. No.	Situation / Difficulties	CBDT guidelines
1	Loan settlement/waiver by banks – regarded as benefits/perquisite	<ul style="list-style-type: none"> <li>▪ One-time loan settlement with borrowers or waiver of loan granted on reaching settlement with the borrowers by prescribed Financial Institutions (including specified NBFCs) not subject to tax withholding under section 194R of the Act</li> <li>▪ The amount of loan settled/waived may be considered as Income of the person who is benefitted by loan waiver as per applicable provisions of the Act.</li> </ul>
2	Reimbursement of expenses	<ul style="list-style-type: none"> <li>▪ It is re-iterated that reimbursement of expenses incurred by the Service provider for the Service recipient (where the invoices for expenses are in name of the Service provider) will be regarded as benefit/prerequisite requiring withholding of tax under section 194R of the Act.</li> <li>▪ Where a Service provider incurs expenditure in the capacity of a 'Pure Agent' where the input tax credit of GST for such expenditure is allowed to the Service recipient, the amount of expenditure reimbursed by the Service provider is not to be considered as benefit/perquisite.</li> </ul>
3	Tax withholding under section 194R where where tax is already withheld under section 194C/194J	<ul style="list-style-type: none"> <li>▪ If out-of-pocket expenses are already part of the consideration, (As per Circular 715 dated 8 August 1995) on which tax is withheld under section 194C or 194J, then there is no further liability to withhold tax under section 194R of the Act.</li> </ul>

4	Dealer conferences	<ul style="list-style-type: none"> <li>▪ Dealer conferences may be for a select group of dealers</li> <li>▪ Expenditure incurred for overstay of the participants, prior to or beyond the dates of the conference will be considered as benefit/perquisite. However, a day immediately prior to the actual start date and a day immediately following the end date of the conference will not to be considered as an overstay.</li> <li>▪ If during such conference any benefit/perquisite is provided in a group activity, where it is difficult to allocate expenditure to each participant using a reasonable allocation key, then the Provider may opt not to claim tax deduction for such expenditure; if so decided, then there will be no requirement to withhold tax under section 194R.</li> </ul>
5	Depreciation on capital assets provided as benefit/perquisite	<ul style="list-style-type: none"> <li>▪ Where a depreciable asset (like a car or vehicle) is provided as benefit/perquisite which is used by the Recipient for his business purposes and has offered such receipt as his income, then the Recipient will be eligible to claim depreciation on such asset.</li> </ul>
6.	Benefits/perquisites provided by Embassy/High Commissions	<ul style="list-style-type: none"> <li>▪ No tax to be withheld from benefits/perquisites provided by an organisation in the scope of The United Nations (Privileges and Immunity Act) 1947, an organisation whose income is exempt under the specific Act of Parliament, an embassy, a high commission, legation, commission, consulate and trade representation of a foreign state.</li> </ul>
7.	Bonus shares/ Right shares	<ul style="list-style-type: none"> <li>▪ Where bonus/right shares are issued to all the shareholders of a company in which public are substantially interested, no tax is required to be withheld on issuance of such shares.</li> </ul> <p><b>JMP Insights:</b> <i>The guidelines do not provide any exemption for companies in which public are not substantially interested.</i></p> <p><i>The mechanism for valuation of bonus/right shares has not been provided.</i></p>

**JMP Insights:** *The Circular has provided a great deal of clarity. However, the taxpayers may face challenges in complying with the requirements of this section.*

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](mailto:coe@jmpadvisors.in).

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