

TDS u/s 194R on advantage or perquisites allowed

Budget Proposal

Section 28(iv) of the Income-tax Act (**IT Act**) taxes the non-monetary benefit or perquisite arising from business or profession whereas Section 194R of the IT Act provides for 10% withholding tax on providing business perquisites.

The Finance Bill 2023 proposes to amend the Section 28(iv) of the IT Act to include cash/ monetary perquisites as well within its ambit. Similarly, it is proposed to clarify that withholding tax under Section 194R of the IT Act is applicable whether the perquisite received is in cash or in kind or partly in cash and kind.

Background to the Issue

It is a settled position under Section 28(iv) by judicial pronouncements, including the decision of Hon'ble Supreme Court in the case of CIT v. Mahindra & Mahindra Ltd. [2018] 93 taxmann.com 32 (SC), that the said section only taxes the non-monetary business perquisites and excludes any cash / monetary perquisites from its ambit.

Additionally, Finance Act, 2022 introduced withholding tax on business perquisites vide Section 194R. Further, the Guidelines to Section 194R specified that all business perquisites, whether in cash or in kind or partly in cash and kind, are subject to withholding of taxes. The same created a controversy whether the Guidelines, being a delegated legislation, exceed its mandate and widen the ambit of Section 194R to cover monetary perquisites, which were otherwise not expressly covered within ambit of Section 28(iv).

Impact

Relying on the aforesaid Supreme Court ruling, several taxpayers adopted a position that monetary perquisites are not covered by Section 194R for the purposes of withholding tax. The Budget proposal will attempts to nullify such position basis statutory stipulation and put to rest the debate surrounding cash perquisites by whatever name called.

The amendment is proposed to be effective from 1 April 2023. Accordingly, the companies providing cash perquisites to their customers, service providers and

vendors may have to withhold tax under Section 194R of the IT Act.

Given this, the industry players which had taken a no-withholding position on monetary perquisites will have to alter their internal compliance process. Additionally, the instant proposal also changes the settled legal position pertaining to monetary perquisites now expressly covered within ambit of Section 28(iv).

ELP Insights

The proposal to include cash / monetary perquisite within the ambit of Section 28(iv) and Section 194R greatly increases the compliance burden on the businesses, which is contradictory to the Budget theme regarding ease of compliance.

In any case, the very purpose of introduction of the withholding provisions under Section 194R was to tap income on account of non-monetary perquisites to widen the tax net as these item were going unreported, in various cases, at the recipient's end. However, introducing withholding tax on cash perquisites may not have similar effect as monetary perquisites are generally accounted as income and thus, are taxed. Accordingly, the compliance burden has been increased without commensurate benefit on tax collection front.

Additionally, the proposal also changes the settled legal position, which may open pandoras box. For instance - there are certain relaxations introduced in the Guidelines under Section 194R (such as loan waiver by financial institutions), the same are not extended to Section 28(iv) which may lead to litigation.

The proposal will mainly impact the FMCG, retail, pharma and similar consumer facing sectors.