

Latest in Company law & Income-tax



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AGENDA

× Income tax

- + Form 67

- + Form 69

- + S. 194R

- + ITR A

× Company Law

- + CSR

- + Small company

× Format of FS for Non-Corporate

× Mandatory Peer Review

FORM 67

- ✘ **Sub-Rule (9) of R. 128 substituted**
- ✘ **Form No. 67 shall be furnished on or before the end of the AY relevant to the PY in which the income has been offered to tax or assessed to tax in India and the return for such AY has been furnished within time specified u/s 139(1) / (4)**
- ✘ **Where ITR has been furnished u/s 139(8A), the statement in Form No. 67 shall be furnished on or before the date on which such return is furnished.**

FORM 69

- × **R. 132 inserted**
- × **To be read with section 155(18)**
- × **Form 69 introduced**
- × **Its for recomputation of total income without claiming surcharge and cess as expenditure**
- × **4 years from 1st April 2021**
- × **Otherwise – under-reporting of income u/s 270A(3)**
- × **Last date – 31st March 2023**

ITR A

- × **R. 12AD inserted**
- × **Form ITR A (Acknowledgement) inserted**
- × **ITR 6 amended**
- × **For filing modified return of company post reconstruction / amalgamation u/s 170A**

SECTION 194 R

TDS - S. 194R

- ✘ Inserted from 1.4.2022 for providing to a **resident**, any **benefit or perquisite**, whether convertible into money or not, arising from carrying out of **business or profession by such resident**:
 - + **before providing such benefit or perquisite** - TDS @ 10%
 - + If value or aggregate of value exceeds Rs. 20000/- per person in FY.
 - + If in kind, payer to **ensure tax is paid** before releasing benefit

APPLICABILITY

- **Effective from 1.4.2022. TDS from 1.7.2022.**
- **Exceeding Rs. 20000/- in aggregate in a AY**
- **To resident arising from carrying out of business or profession.**
- **Benefit / perquisite if in kind may be capital / revenue, but the benefit would be income**
- **Person providing benefit/perquisite to deduct TDS @ 10% before providing such benefit or perquisite.**
- **Deposit:**
 - **If TDS – 7th of next month**
 - **If deposit by beneficiary – before receiving benefit**

CIRCULAR

- **Circular No. 12 of 2022 dt. 16th June 2022**
- **Circular No. 18 of 2022 dt. 13th September 2022**
- **Circular is only for removing difficulties in implementation of provisions of s. 194R of the Act; AND**
- **It does not impact taxability of income in the hands of which shall be governed by the relevant provisions of the Act.**

CIRCULAR

- **Benefit or perquisite provided may not be taxable u/s 28(iv) in the hands of the receiver, it could be covered u/s 41(1) too.**
- **Benefit can be in cash or in kind??**
- **Benefit could be a capital asset in hands of the receiver.**
- **Cash discounts, sales discounts, rebates excluded.**

SPECIFICALLY INCLUDED

- **Free samples**
- **Incentives (other than discount, rebate) in form of cash or kind such as Car, TV, Computers, Gold coin, Mobile phones, etc.**
- **Sponsorship of trip for recipient and his/her relative upon achieving certain targets.**
- **Free ticket for an event.**
- **Medicine samples free to medical practitioners.**
- **What if free display sample??**

SPECIFICALLY EXCLUDED

- **Cir. No. 18 – Benefit/perquisite provided by:**
 - **An organization in scope of The United Nations (Privileges and Immunity Act) 1947,**
 - **An international organization whose income is exempt under specific Act of Parliament (e.g. Asian Development Bank Act 1966),**
 - **An embassy,**
 - **A High Commission,**
 - **Legation, commission, consulate and the trade representation of a foreign state.**

INDIRECT COVERAGE

- **Benefits/perquisites may be used by owner / director/employee of recipient entity or their relatives who in their individual capacity may not be carrying on business or exercising a profession . However, TDS required in name of recipient entity .**
- **Example - Free medicine sample provided by company to doctor who is employee of a hospital. TDS u/s 194R in hands of hospital as benefit is provided to doctor being employee of hospital. Hospital can treat it as a perquisite given to employee u/s 17 and TDS u/s 192.**

INDIRECT COVERAGE

- **Free medicine sample provided by a company to a doctor who is consultant in a hospital. TDS u/s 194R in hands of hospital and then hospital may again deduct tax u/s 194R as benefit to the consultant. To remove difficulty, as an alternative, the original benefit/perquisite may directly deduct tax in the case of consultant as a recipient.**
- **S. 194R shall not apply if benefit / perquisite is being provided to Government entity, like Government Hospital, not carrying on business or profession.**

BENEFIT DURING PROMOTION

- **Social media influencer is given a product - to use and make audio/video to promote.**
 - **When Benefit/perquisite like car, mobile, outfit, etc. is returned to manufacturer after using it for purpose of rendering service –**
No s. 194R
 - **When Benefit receiver has retained it -**
194R
 - **What if item consumed??**

VALUATION OF BENEFIT/PERQUISITE

- **FMV of the benefit or perquisite except:**
 - **When purchased - Purchase Price of benefit.**
 - **When manufactured - Price that it charges to its customers**
- **GST not be included for purpose of valuation of benefit for TDS u/s 194R.**
- **Date of benefit? Date of valuation???**

RE-IMBURSEMENTS

- **Expenditure which is liability of person carrying out business/profession, if met by other person - benefit/perquisite.**
- **Consultant X renders service to Co. Y. X travels & incur exp. for rendering service to Y:**
 - **(1) - X pays for expense which is part of his business expenditure – No benefit.**
 - **(2) - If travel expense is met by company Y:**
 - **(a)– Invoice of expenses obtained in name of Y and paid by X, is reimbursed by Y to X–No s 194R**
 - **(b)– If invoice is not in name of Y & payment made by Y directly or reimbursed – Y - 194R**

RE-IMBURSEMENTS

- **Reinforced the view in cir. No. 18 with GST input**
- **If bill is in name of service provider, then in substance (irrespective of terms of agreement) expense is liability of service provider & not of service recipient. Service provider gets input credit of GST. If it was liability of the service recipient, then GST input credit would have been allowed to him and not to service provider. Hence, ans. to Q. No 7 in the Cir. No 12 correctly clarifies that TDS is required u/s 194R**
- **If service provider incurs an expense as "pure agent", then GST input credit is allowed to service recipient and not to service provider and is not be treated as benefit/perquisite for the purpose of s. 194R**

RE-IMBURSEMENTS

- Under GST Valuation Rules 2017 "pure agent" means a person who:
 1. Enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
 2. Neither intends to hold nor holds any title to the goods or services or both, so procured or provided as pure agent of the recipient of supply;
 3. Does not use for his own interest such goods or services so procured; and
 4. Receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

RE-IMBURSEMENTS - S. 194C / 194J / 194R

- **CBDT Circular No 715 dated 8th August 1995 clarifies that tax deduction u/s 194C and 194J is required to be made from the gross amount of bill including the reimbursement.**
- **Cir. No. 18 – if reimbursement already included as part of professional fee, then Circular No 715 would apply and not s. 194R**

CONFERENCES

- **Expenditure pertaining to dealer/business conference – no benefit/perquisite if for any of following aspects :**
 - **New product launch.**
 - **Discussion on how the product is better than others.**
 - **Obtaining orders from dealers/customers.**
 - **Teaching them sales techniques.**
 - **Addressing their queries.**
 - **Reconciliation of Accounts with theirs.**

CONFERENCES

- **Covered - if not be in nature of incentives / benefits to select dealers / customers who have achieved particular targets, such as:**
 - **Attributable to leisure trip or leisure component, even if it is incidental to dealer / business conference ??**
 - **Incurred for family members accompanying the person attending conference.**
 - **On participants of such conference for days which are on account of prior stay or over stay beyond the dates of such conference ???**

CONFERENCES – CIR. NO. 18

- **Not necessary that all dealers are required to be invited in a conference for expenses to be not considered as benefit/perquisite.**
- **Over / prior stay - A day immediately prior to actual start date of conference & a day immediately following actual end date of conference would not be considered as over stay**
- **Group Activity - If it is difficult to match it to each participant using reasonable allocation key, - not claim expense, representing such benefit/perquisite, as deductible expenditure.**

DEPOSIT OF TAX WHEN IN KIND

- Requirement is – person is required to ensure that tax required to be deducted has been paid by the recipient.
- Recipient would pay tax in form of Advance Tax.
- Deductor may rely on declaration along with a copy of advance tax challan provided by recipient confirming that such tax is deposited.
- Report in TDS Return along with Challan No.
- Form 26Q contains provision for same.
- Alternatively, benefit provider may deduct tax u/s 194R and pay to govt.

OTS

- **Q.3 of Cir. 12 – Amt. representing principal loan waived by bank under OTS would constitute income falling u/s 28(iv) relating to value of any benefit or perquisite, arising from business or exercise of profession -*CIT v Ramaniyam Homes (P) Ltd (2016) 68 taxmann.com 289 (Mad)***

OTS

- **Q 1 of Cir. 18 - waiver or settlement of loan by the bank may be an income...following would not be subjected to s 194R:**
 - **Public Financial Institution as defined in s. 2(72) of Companies Act 2013**
 - **Scheduled Bank as defined in clause (ii) of Expl. to S. 36(1)(vii)**
 - **Cooperative bank (other than primary agricultural credit society) as defined in Expl. to s. 80P(4)**
 - **Primary co-operative Agricultural & Rural Development Bank as defined in Expl. to s. 80P(4)**
 - **State Financial Corporation established u/s 3 /3A or u/s 46 of State Financial Corporation Act, 1951**

OTS

- ~~...following would not be subjected to s 194R:~~
 - State Indl. Investment Corporation being a Govt. company within meaning of s. 2(45) of Companies Act 2013, engaged in business of providing long-term finance for industrial projects
 - Deposit taking NBFC as defined in clause (e) of Expl. 4 to s. 43B
 - Systemically Important Non-deposit taking NBFC as defined in clause (g) of the Expl. 4 to section 43B
 - Public company engaged in providing long term finance for construction/purchase of houses in India for residential purpose & which is registered in accordance with guidelines issued by NHB
 - ARCs registered u/s 3 of SRFAESI Act 2002.



- **Will the recipient have to record the benefit?**
 - **Yes**
- **Would depreciation be allowed if any capital asset like mobile received?**
 - **Yes – Cir. No. 18**
- **Diwali gift of Rs. 1000/- each to 30 employees in purchase department of the customer?**
 - **Yes**
- **Free insurance on sale of car?**
 - **No**
- **Interest free loans?**
 - **???**



- **Employees training and excursions?**
 - No
- **Scheme for dealers?**
 - Yes
- **Car on purchasing residential immovable property by Mr. X?**
 - No
- **Diwali gift to customers and suppliers?**
 - Yes
- **Diwali gift to employees?**
 - No



- **Donation to Charitable Trust?**
 - No
- **Selling immovable property at less than FMV?**
 - No
- **Trip with family to Non-resident suppliers?**
 - No
- **Company incurs expense of Boarding & Lodging for its customers to visit their office?**
 - No
- **Free medical samples to Hospitals registered u/s 12A / 10(23C)?**
 - ???



- **Schemes from Company to Distributor to Dealer**
 - **Yes**
- **Bonus Issue / right Issue / IPO / FPO**
 - **!!!!!!!**
 - **Cir. 18 - Issuance of bonus /right shares by a company in which public are substantially interested as defined in s. 2(18), where bonus/ rights shares are issued /offered to all shareholders**
- **Bad Debts w/o?**
 - **???**
 - **S. 194 R-provided; s.41(1)-obtained**

S. 28 / 41

- ✘ **S. 28(iv) – value of any benefit or perquisite, whether convertible into money or not Arising from carrying out of business or profession**
- ✘ **S. 41(1) (a) - has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him**

S. 194R

- × **Any person**
- × **Responsible for providing**
- × **To a resident**
- × **Any benefit or perquisite, whether convertible into money or not**
- × **Arising from carrying out of business or profession by such resident**

COMPANY LAW

CSR

- × **CSR Rules amended w.e.f. 20th September 2022**
 - + **Substitutes Annual Report on CSR to be included in Board Report**
 - + **Need not wait for 3 years when CSR provisions not applicable later. However, if amount pending in unspent CSR A/c - to continue**
 - + **- S. 10(23C) trusts also allowed to implement CSR for company**
 - + **- Impact assessment expenditure reduced to 2% or Rs. 50 Lacs whichever is higher**

SMALL COMPANY

- × **Defined u/s 2(85)**
- × **Excluded:**
 - + **Public Company**
 - + **Holding company**
 - + **Subsidiary company**
 - + **Section 8 company**
- × **Limit increased w.e.f. 15.9.2022 of:**
 - + **Paid up capital from Rs. 2 Crs to Rs. 4 crs; AND**
 - + **Turnover from Rs. 20 cr to Rs. 40 cr (as per PL of immediately preceding FY)**

**FORMATS OF
FINANCIAL STATEMENTS
FOR
NON-CORPORATE ENTITIES**

BALANCE SHEET

NAME OF THE NON-CORPORATE ENTITY.....
BALANCE SHEET AS AT

	Particulars	Note No	Figures as at the end of (Current reporting period) (in Rs.) _____ (DD/MM/YYYY)	Figures as at the end of (Previous reporting period) (in Rs.) _____ (DD/MM/YYYY)
	1	2	3	4
I.	EQUITY AND LIABILITIES			
	(1) Owners' Fund			
	(a) Owners Capital Account			
	(b)Reserves and surplus			
(2)	Non-current liabilities			
	(a) Long-term borrowings			
	(b) Deferred tax liabilities (Net)			

	Particulars	Note No	Figures as at the end of (Current reporting period) (in Rs.) _____ (DD/MM/YYYY)	Figures as at the end of (Previous reporting period) (in Rs.) _____ (DD/MM/YYYY)
	(c) Other Long Term Liabilities			
	Long-term provisions			
(3)	Current liabilities			
	(a) Short-term borrowings			
	(b) Trade payables:- (A) total outstanding dues of MSME and (B) total outstanding dues of creditors other than micro, small and medium enterprises .			
	(c)Other current liabilities			
	(d)Short-term provisions			
	TOTAL			
II.	ASSETS			
(1)	Non-Current Assets			
	(a) Property, Plant and Equipment & Intangible assets			
	(i) Property, Plant and Equipment			
	(ii) Intangible assets			

	Particulars	Note No	Figures as at the end of (Current reporting period) (in Rs.)	Figures as at the end of (Previous reporting period) (in Rs.)
			_____ (DD/MM/YYYY)	_____ (DD/MM/YYYY)
	(iii) Capital work-in-progress			
	(iv) Intangible assets under development			
	(b) Non-current investment			
	(c) Deferred tax assets (net)			
	(d) Long-term loans and advances			
	(e) Other non-current assets			
(2)	Current assets			
	(a) Current investments			
	(b) Inventories			
	(c) Trade receivables			
	(d) Cash and bank balances			
	(e) Short-term loans and advances			
	(f) Other current assets			
	TOTAL			

STATEMENT OF PROFIT AND LOSS

Name of the Non-Corporate Entity.....

Statement of Profit and loss for the year ended

(Rupees in.....)

	Particulars	Note	Figures for the current reporting period (in rs.) From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)	Figures for the previous reporting period (in Rs.) From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)
	1	2	3	4
I.	Revenue from operations		xxx	Xxx
II.	Other income		xxx	Xxx
III.	Total Income (I + II)		xxx	Xxx
IV.	Expenses			
(a)	Cost of Goods Sold			
(b)	Employee benefits expense		xxx	Xxx
(c)	Depreciation and amortization expense		xxx	Xxx
(d)	Finance Cost		xxx	Xxx
(e)	Other expenses		xxx	xxx

	Particulars	Note	Figures for the current reporting period (in Rs.) From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)	Figures for the previous reporting period (in rs.) From _____ (DD/MM/YYYY) To _____ (DD/MM/YYYY)
	Total expenses		xxx	xxx
V	Profit before exceptional and extraordinary items & tax (III-IV)		xxx	xxx
VI	Exceptional items		xxx	xxx
VII	Profit before extraordinary items and tax (V - VI)		xxx	xxx
VIII	Extraordinary Items		xxx	xxx
IX	Profit before tax (VII- VIII)		xxx	xxx
X	Tax expense:			
(i)	Current tax		xxx	xxx
(ii)	Deferred tax		xxx	xxx
XI	Profit (Loss) for the period from continuing operations (VII-VIII)		xxx	xxx
XII	Profit/(loss) from discontinuing operations		xxx	xxx
XIII	Tax expense of discontinuing operations		xxx	xxx
XIV	Profit/(loss) from Discontinuing operations (after tax) (XII-XIII)		xxx	xxx
XV	Profit/ (Loss) (XI + XIV)		xxx	xxx

MATTERS FOR FS OF NON-CORPORATES

- × List of Trade Receivables / Payables**
- × List of unsecured Loans**
- × Notes to the Accounts**
- × Significant accounting policies**
- × MSMED Act 2006**

PEER REVIEW MANDATED

Phase	Category of Firms	Date of Implementation
I	Firms which have undertaken Statutory Audit of enterprises whose equity or debt securities are listed in India or abroad	1 st April 2022
II	<ul style="list-style-type: none"> • Firms which have undertaken Statutory Audit of unlisted public companies having: <ul style="list-style-type: none"> ○ paid-up capital of not less Rs. 500 Crores or ○ having annual turnover of not less than Rs. 1000 crores or ○ having, in aggregate, outstanding loans, deb. and deposits of not less than Rs. 500 crores as on the 31st March of immediately preceding FY <p>OR</p> • Firms having 5 or more partners anytime during the immediately preceding FY 	1 st April 2023

PEER REVIEW MANDATED

Phase	Category of Firms	Date of Implementation
III	<p>Firms which have undertaken the Statutory Audit of:</p> <ul style="list-style-type: none"> • entities which have raised funds from public or banks or financial institutions of over Rs. 50 Crores during the period under review or • any body corporate including trusts which are covered under public interest entities <p>OR</p> <ul style="list-style-type: none"> • Firms having 4 or more partners may be covered in the Phase 3 of the rollout 	1 st April 2024
IV	<p>Firms conducting audits of branches of Public Sector banks</p> <p>OR</p> <p>Firms having 3 or more partners and rendering assurance services</p>	1 st April 2025

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Q. How I file income tax return

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