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Are you a social media influencer or doctor? Here's how the new TDS rules will impact you



By [Nishtha Pandey](#) | [Amrita Das](#) | Jun 26, 2022, 01:03 PM IST (Updated)

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As per the new guidelines, a 10% deduction at source (TDS) will happen on freebies if social media influencers and doctors receive these freebies through sales promotions and their value exceeds Rs 20,000 in a financial year.

Masoom Minawala is a social influencer with 1.2 million followers on Instagram. As part of her work, she receives several products from brands for promotions, but some of these stay back with her. Doctors also retain some medical samples shared by pharma firms.

These 'gifts' will now be taxed from July 1 under the new TDS guidelines issued by the Central Board of Direct Taxes (CBDT). Social media influencers are now seeking out chartered accounts to help them with the same.

Anuradha K Bhandari and Ashutosh Bhandari, who run an Instagram page, Thegoofyones, told CNBC-TV18: "Now, we will have to understand this taxation process about the 10 percent deduction when we collaborate with any small business or companies."

Minawala told CNBC-TV18 most of the gifts are from small brands that acknowledge that their product may or may not get featured. "But with additional TDS going out of their pockets, they'll have to rethink gifting," Minawala said, adding they are seeking help for more clarity.

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What do the new rules say?

The provision introduced in the Finance Act 2022 as section 194R mandates a 10 percent tax deducted at source (TDS), exclusive of surcharge and cess, on freebies exceeding Rs 20,000 in a year that influencers and doctors receive and retain from sales promotions.

"Influencers and doctors will have to now file tax in advance if the value of freebies they receive exceeds Rs 20,000 in a year," said Shubham Sharma, founder of law consultancy firm SRS Associates.

The guidelines provide examples of freebies where tax will be deducted under section 194R. These include incentives in form of cash, TV, car, computers (or any other gadgets), outfits, cosmetics, gold coins, jewellery, sponsored trips, free tickets to events, and medicine samples given for free to a doctor.

How will the authorities plug tax leakages?

According to Ashish Sodhani, Leader, International Tax Advisory & Litigation at law firm Nishith Desai Associates, any such expenditure incurred by a company would have to be accounted for in their books.

"This would assist the tax authorities in determining what was shared," Sodhani told CNBC-TV18. "Whether they (influencers/doctors) may be raided or not is a subjective question and may depend on other factors. However, scrutiny based on information received from the companies providing the benefits can definitely be part of the process."

As per Sodhani, a process with proper documentation might be implemented between the companies and doctors/influencers, which would act as proof that the gifts and benefits were retained or not.

Will companies reporting such gifts might come under more scrutiny? Sodhani said: "Section 194R was included in the Income Tax Act due to non-reporting of transactions taxable under Section 28(iv). Therefore, reporting would only be a beneficial step for the companies to reduce the scrutiny that would otherwise take place."

What is in it for social media influencers?

According to the CBDT, whether the product given for promotion is beneficial or perquisite will depend upon the facts of the case. "In case of benefit or prerequisite being a product is a car, mobile, outfit, cosmetics, etc., and if the product is returned after using for the purpose of rendering service, then it will not be treated as a benefit or prerequisite," CBDT said.

In influencer marketing, a barter system through which brands offer free samples or gifts to influencers in return for a post on social media is very common. According to Sharma, these gifts, because of negligible paperwork, are mostly not mentioned by influencers and also doctors when

they file income tax returns.

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"The barter system is an easy method for brands to save (on marketing costs) and for small creators to grow. Technically, an influencer is providing a service to the brand. This counts as a transaction and, hence, new provisions have been added," Sharma said.

The Bhandaris believe that because of a lack of clarity around the subject budding influencers might "shy away from barter collaborations". Minawala, too, voiced similar concerns.

"For small-scale brands that can't afford to invest in influencer marketing, gifting is a safe choice. I come across many small brands and feature them even if it's only a barter opportunity because my aim is to highlight their craft and spotlight the market gap they're filling. With additional TDS, it may not be financially feasible for startups to collaborate even on a barter basis and small-scale businesses will be at a loss," Minawala said.

Meanwhile, Swati Sharma, founder of consultancy firm F Square Media, says the move will be beneficial for influences in the long run. "Barter system is a flawed concept and a lot of freebies go to waste. Influencers will now think twice before indulging in barter and can even demand the payment that they deserve for their work from brands," she said.

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What do the new rules mean for doctors?

For doctors, CBDT clarified that section 194R would be applicable to the distribution of free samples to a hospital when doctors receive free samples while being employed there. Such samples can be considered taxable perquisites for employees by the hospital, and thus tax can be deducted under Section 192. In such a case, the threshold of Rs 20,000 must be viewed in relation to the hospital, as per the norms.

"To the extent that certain items are provided to doctors in compliance with the Medical Council of India's code of ethics and the recent Apex Laboratories ruling, the company would take a deduction for the same in its books, which would be the basis for the CBDT to determine what has been shared with the doctors," Sodhani said.

In the case of items other than these, the same cannot be taken as a deduction and CBDT might not be able to prima facie ascertain what has been shared, according to Sodhani.

He explained that a stricter code of ethics is currently being deliberated by the National Medical Commission and a draft has already been published "So companies may need to relook at what

Commission, and a draft has already been published. So, companies may need to relook at what is permissible under the revised code of ethics read with the Apex Laboratories ruling, in order to be able to avail of deductions in its books," Sodhani said.

As these new rules kick in from July 1 despite the grey areas, influencers and doctors will need to be careful before accepting any free gifts and will need to report appropriately in case they don't want to turn into tax evaders.

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First Published: Jun 24, 2022, 02:17 PM IST

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