

Taxation of virtual digital assets: Summary of clarificatory guidelines on section 194S of the Income-tax Act, 1961

The Finance Act, 2022 inserted a new section 194S in the Income-tax Act, 1961 (the Act) with effect from July 01, 2022, which mandates that consideration for transfer of a virtual digital asset (VDA) shall be subject to tax deduction at source (TDS) at the rate of 1%. The CBDT issued guidelines vide [Circular](#) dated June 22, 2022 to address concerns in the implementation of the section, and the key takeaways are highlighted below:

1. Determination of person responsible for deducting tax in specified situations:

- a) *Where transfer of VDA between buyer and seller is routed through an 'Exchange' i.e. any person that operates an application or platform for transferring of VDAs, which matches buy and sell trades and executes the same on its application or platform (and consideration is not in kind)*

◇ If VDA is owned by person other than Exchange:

The Exchange is responsible for undertaking TDS compliance where:

- payment is made by the Exchange directly to seller (no broker); or
- the broker owns and sells the VDA.

Both the Exchange and broker shall be responsible for undertaking TDS compliance where:

- Payment to seller (other than broker) and credit/ payment between Exchange and seller is routed through a broker;

In case of written agreement to such effect between the Exchange and the broker, the **broker alone may undertake TDS compliance**. The Exchange would be required to furnish a quarterly statement for all such transactions.

◇ If VDA is owned by the Exchange, and payment is made by the buyer to the Exchange:

Buyer shall have primary responsibility for TDS compliance.

In case of difficulty faced by buyer to determine whether VDA is owned by the Exchange, the Exchange and the buyer/ broker may enter into a written agreement to the effect that **the Exchange will be undertaking TDS compliance**. The Exchange would be required to furnish a quarterly statement for all such transactions, as well as include them in return of income.

- b) *Where transfer of VDA takes place through the Exchange (and consideration is in kind or in exchange for another VDA)*

In case of consideration in kind, person responsible for paying such consideration is required to ensure that TDS has been paid in respect of such consideration before releasing the consideration. Since both persons are buyer and seller, **both need to pay tax with respect to the transfer of VDA and provide evidence to each other** for the exchange to be complete.

In case the transaction is through an Exchange, **the Exchange may undertake TDS compliance**, based on written agreement with the buyers/sellers.

Conversion of TDS into cash where Exchange is undertaking TDS compliance:

- Withhold tax in kind (i.e. 1% of VDA units)
- Conversion into primary VDAs (in case transaction involves non-primary VDA) by placing a market order for conversion
- Conversion of primary VDAs into INR by placing market order for conversion

No further TDS shall be applicable for converting tax withheld in kind into INR or from one VDA to another VDA and thereafter into INR

2. **Clarification to the effect that transaction subject to TDS under section 194S would not be subject to TDS under section 194Q.**
3. **Clarification to the effect that TDS shall be on ‘net consideration’ after excluding GST/charges levied by the deductor for rendering service.**
4. **Clarification in case of transactions undertaken through payment gateways:**

Where payment in consideration for transfer of VDA is made through a payment gateway, both buyer and payment gateway may be considered as persons liable to deduct TDS, leading to possible double taxation. In such situation, if tax is already withheld by person responsible for paying to the seller, payment gateways will not be required to deduct tax. The payment gateway may obtain an undertaking to this effect to facilitate implementation.

5. **Clarification for computation of threshold limit under section 194S.**

- For the purposes of calculating threshold limit of INR 50,000/ 10,000, consideration shall be counted for the entire financial year from April 01, 2022 (i.e. including the period up to 30th June 2022).
- Amounts credited or paid before July 01, 2022 would not be subject to TDS.