Circular no. 14 of 2022

F. No. 370142/29/2022-TPL (Part 1)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)
*****

New Delhi, dated 28th June, 2022

Subject: Order under section 119 of the Income-tax Act, 1961 (the Act) in relation to tax deduction at source under section 194S of the Act for transactions other than those taking place on or through an Exchange

Finance Act, 2022 inserted a new section 194S in the Act with effect from 1st July 2022. The new section mandates a person, who is responsible for paying to any resident any sum by way of consideration for transfer of a virtual digital asset (VDA), to deduct an amount equal to 1% of such sum as income tax thereon. The tax deduction is required to be made at the time of credit of such sum to the account of the resident or at the time of payment, whichever is earlier.

This deduction is not required to be made in the following cases:-

(i) the consideration is payable by a specified person and the value or aggregate value of such consideration does not exceed fifty thousand rupees during the financial year; or

(ii) the consideration is payable by any person other than a specified person and the value or aggregate value of such consideration does not exceed ten thousand rupees during the financial year.

The following are defined as "specified person" for the purposes of this provision:

(i) An individual or Hindu undivided family (HUF) who does not have any income under the head "profit and gains of business or profession"; and

(ii) An individual or HUF having income under the head "profits and gains of business or profession", whose total sales/gross receipts/turnover from business carried on by him does not exceed one crore rupee or in case of profession exercised by him does not exceed fifty lakh rupee. This threshold is to be seen in the financial year immediately preceding the financial year in which the VDA is transferred.

Sub-section (6) of section 194S of the Act authorises Central Board of Direct Taxes (CBDT) to issue guidelines, for removal of difficulties, with the approval of the Central Government. Accordingly, in exercise of the power conferred by sub-section (6) of section 194S of the Act, CBDT has issued guidelines in the form of Circular No. 13 of 2022 dated 22.06.2022 for transactions conducted on or through an Exchange. For all other transactions only the clarification provided in answer to question no 6 of that circular is applicable. The term

"Exchange" has been defined to mean 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. Same definition applies to this circular.

For all other transactions (not covered by circular no 13/2022), this circular is being issued under section 119 for proper administration of the Act.

1) Liability to deduct tax at source under section 194S of the Act when the consideration is other than in kind

According to section 194S of the Act, any person who is responsible for paying to any resident any sum by way of consideration for transfer of VDA is required to deduct tax. Thus, in a peer to peer (i.e. buyer to seller without going through an Exchange) transaction, the buyer (i.e person paying the consideration) is required to deduct tax under section 194S of the Act. The tax so deducted is required to be deposited with Government in accordance with the time and procedure prescribed in the Act read with the relevant provisions of the Income-tax Rules, 1962.

After deduction, the deductor is required to furnish a quarterly statement (in Form No. 26Q) for all such transactions of the quarter on or before the due date prescribed in the Income-tax Rules, 1962. For specified person Form 26QE has been introduced.

It may be clarified that the TDS shall be on consideration for transfer of VDA less GST.

2) Liability to deduct tax at source under section 194S of the Act when the consideration is in kind or in exchange of VDA

According to the proviso to sub-section (1) of section 194S of the Act, there could be a situation where the consideration is in kind or in exchange of another VDA or partly in kind and cash is not sufficient to meet the TDS liability. In this situation, the person responsible for paying such consideration is required to ensure that tax required to be deducted has been paid in respect of such consideration, before releasing the consideration.

Thus, the buyer will release the consideration in kind after seller provides proof of payment of such tax (e.g. challan details etc.). In a situation where VDA "A" is being exchanged with another VDA "B", both the persons are buyer as well as seller. One is buyer for "A" and seller for "B" and another is buyer for "B" and seller for "A". Thus both need to pay tax with respect to transfer of VDA and show the evidence to other so that VDAs can then be exchanged. This would then be required to be reported in TDS statement along with challan number by both of them. This year Form 26Q has included provisions for reporting such transactions. For specified persons, Form 26QE has been introduced.

3. Interplay between provision of section 194S and section 194Q

Without going into the merit whether VDA is goods or not, it is clarified that once tax is deducted under section 194S of the Act, tax would not be required to be deducted under section 194Q of the Act.

Ankit Jain

Digitally signed by Ankit Jain
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Ankit Jain
Under Secretary (TPL)-III

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