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TDS on payment for the transfer of Virtual Digital Assets (VDAs)

Section 194S provides that any person who is responsible for paying to any resident any sum by way of consideration for the transfer of a virtual digital asset shall deduct tax from such sum. The tax shall be deducted at the rate of 1% of such sum.

Deductor

Any person responsible for paying to any resident person any sum by way of consideration for the transfer of a virtual digital asset is required to deduct tax at source under Section 194S. The person responsible for the deduction of tax under different circumstances shall be as follows:

- (a) Where the buyer and seller of virtual digital asset know each other in an over-the-counter (OTC) deal, the buyer shall deduct tax at source.
- (b) In case of exchange of VDAs, both payer and payee may be liable to deduct tax at source as the transfer of VDA happens from both sides.
- (c) Where VDAs are transferred through an Exchange and payment to the seller is made directly by the exchange, In such cases, the exchange shall be liable to deduct tax at source.
- (d) Where VDAs are transferred through an Exchange but the payment is made to the seller through a broker. In such case, both the Exchange and the broker shall be liable to deduct tax at source. However, if there is a written agreement between the Exchange and the broker that the broker shall be deducting tax on such payment, then such broker alone may deduct the tax.
- (e) Where VDA being transferred is owned by the exchange itself, the primary responsibility to deduct tax shall be of the buyer or his broker. However, as an alternative, the Exchange may enter into a written agreement with the buyer or his broker that in regard to all such transactions the Exchange would be paying the tax on or before the due date for that quarter.
- (f) Where one VDA is exchanged with another VDA through an Exchange, the primary responsibility to deduct tax is of though buyer and the seller. But, as an alternative, the Exchange may deduct tax based on a written contractual agreement with the buyer and the seller.
- (g) Where the payment for the transfer of VDA is made through payment gateways, the payment gateway will not be required to deduct tax if the tax has been deducted by the person required to make deduction under this provision.

Deductee

Tax is required to be deducted if the consideration is paid or payable to a resident person. If the recipient of the consideration is a non-resident, the tax may be deductible under Section 195.

Rate of TDS

Tax is required to be deducted at the rate of 1% of the consideration. The rate shall not be further increased by Surcharge and Health & Education Cess.

If the deductee does not furnish PAN, the tax shall be deducted at the rate of 20% as per Section 206AA or if the deductee has not furnished a return of income for a specified period, the payer shall deduct tax at the rate of 1% (if the payer is a specified person) or 5% (if the payer is not a specified person) as per the Section 206AB.

Note: The provisions of Section 206AB are omitted w.e.f. 01-04-2025

Meaning of specified person

The following payers are the specified persons for the purpose of this provision:

- a) An individual or a HUF, whose total sales, gross receipts, or turnover does not exceed Rs. 1 crore in case of business or Rs. 50 lakhs in case of a profession, during the financial year immediately preceding the financial year in which virtual digital asset is transferred;
- b) An individual or a HUF who does not have any income under the head profits and gains of business or profession.

A specified person is not required to apply or obtain a Tax Deduction or Collection Account Number (TAN) for deducting tax under this provision. Thus, he shall be required to quote his PAN in challan and TDS statement.

Time of tax deduction

The tax shall be deducted at the time of payment by any mode or at the time of credit of such sum to the account of the resident, whichever is earlier. Where a person does intra-day trading in cryptocurrencies, the tax shall be deducted every time a transaction is squared-off.

Threshold limit

No tax shall be deducted under this provision if the aggregate consideration payable by any person during the financial year does not exceed Rs. 10,000 (Rs. 50,000 if consideration is payable by a specified person).

The tax required to be withheld under this provision shall be on the "net" consideration after excluding GST/charges levied by the deductor for rendering service.

TDS where consideration is in kind

Where the consideration for transfer of VDA is wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of the whole of such transfer. In such cases, the payer shall ensure that the tax required to be deducted has been paid before releasing the consideration.

The CBDT has clarified that where the payee (i.e., seller) himself pays tax, the tax would be required to be paid in the form of advance tax. The tax deductor may rely on a declaration along with a copy of the advance tax payment challan provided by the seller confirming that the tax required to be deducted on the consideration received for the transfer of virtual digital asset has been deposited. This would be then required to be reported in the TDS return along with the challan number.

TDS where the transaction is through an exchange

Where VDAs are transferred through an Exchange, the buyer would be crediting or making payment to the Exchange (either directly or through a broker). The Exchange then would be required to credit or make payment to the owner of VDA (either directly or through a broker). Since there can be multiple players involved in a transaction taking place through an

Exchange, there is a possibility of tax deduction requirement under section 194S at multiple stages. To remove the difficulty that may arise while deducting tax under this provision in such cases, the CBDT provides as follows:

TDS where the broker is not involved

Tax may be deducted only by the Exchange on crediting or making payment to the seller of VDA.

It is to be noted that where the broker himself owns the VDA, he will be regarded as the seller of VDA, and, accordingly, the consideration paid or payable by the Exchange to the broker shall be subject to deduction of tax under this provision.

TDS where the broker is involved

Where the payment between Exchange and the seller is through a broker (and the broker is not the seller), the responsibility to deduct tax under this provision shall be on both the Exchange and the broker.

However, if there is a written agreement between the Exchange and the broker that broker shall be deducting tax on such payment, then broker alone may deduct the tax. In such a case, the Exchange would be required to furnish a quarterly statement in Form No. 26QF for all such transactions of the quarter on or before the [due date](#).

In this case, the exchange shall be required to report the details of the broker (name, address, PAN, and TAN) and the details of the transaction (date, value of VDA, number of VDA, and total consideration paid/credited for transfer of VDA) in Form 26QF.

TDS where VDA is owned by the exchange itself

Where VDA being transferred is owned by the exchange itself, the primary responsibility to deduct tax shall be of the buyer or his broker.

However, as an alternative, the Exchange may enter into a written agreement with the buyer or his broker that in regard to all such transactions the Exchange would be paying the tax on or before the due date for that quarter. In such a case, the Exchange shall be required to fulfill the following conditions:

- (a) It shall furnish a quarterly statement in Form No. 26QF for all such transactions of the quarter on or before the [due date](#). The exchange shall be required to report details of the broker or buyer (name, address, PAN), details of the transaction (date, value of VDA, number of VDA, total consideration), and details of tax paid (date of tax payment, BSR code of bank, amount paid, serial number of challan) in Form 26QF; and
- (b) It shall furnish its income tax return and all these transactions must be included in such return.

TDS where one VDA is exchanged with another through exchange

Where one VDA is exchanged with another VDA through an Exchange, the primary responsibility to deduct tax is of both buyer and the seller. But, as an alternative, the Exchange may deduct tax based on a written contractual agreement with the buyer and the seller.

If such an alternative is exercised, the exchange would be required to deduct tax for both legs of the transactions (i.e., on behalf of both parties) and pay it to the Government. The exchange would be required to report it in Form 26Q as tax deducted on both legs of the transaction.

In this case, it is possible that the tax amount deducted by the Exchange is also in kind (by withholding a portion of VDAs). Thus, tax deducted in the form of VDAs will be required to be converted into cash before it can be deposited with the Government. In this regard, Circular No. 13, dated 22-06-2022 has prescribed the following mechanism which is required to be adopted by the Exchanges:

- (a) If the VDAs (towards tax deducted) are not primary (Primary VDAs are those VDAs which can be easily converted into INR like BT, ETH, USDT, USDC, etc.), then the Exchange shall immediately execute a market order for converting these non-primary VDAs into primary VDAs.
- (b) If the VDAs (towards tax deducted) are primary, then the Exchange shall not convert these primary VDAs into INR immediately but will wait for the closure of the day.
- (c) On the closure of the day at 00:00 hrs, all Primary VDAs, including those converted from non-primary VDAs (towards tax deduction) shall be converted into INR.
- (d) The Exchange shall execute the order to convert Primary VDA into INR based on the open buy orders in the market.
- (e) The Exchange liquidating the VDA shall be prohibited to be a buyer for these VDAs.
- (f) Time stamps of the timing of orders to be maintained for the transactions executed in step (a).
- (g) Price and quantity data for every matched trade in Step 4 shall be maintained by the Exchange and shall be available for verification.
- (h) Customer will be issued a contract note over email which will include the amount of tax withheld in kind under section 194S and the amount of INR realized from such tax withheld.
- (i) The amount of INR realized by following the above procedure shall be deposited in the Government Account by the due date of deposit of TDS.
- (j) No tax to be further deducted on converting the tax withheld in kind in the form of VDA into INR or from one VDA to another VDA and then into INR.

Overriding effect of Section 194S

Where a transaction is subject to TDS under Section 194S and any other section like 194-O, tax shall be deducted under Section 194S. However, where the payer deducts tax under Section 194S, it shall not absolve the payee from deduction of tax under relevant provisions.

For example, if an architect receives Bitcoin from his client as consideration for services, then the architect shall be liable to deduct tax under Section 194S as he is giving the consideration in the form of architecture services to the client transferring the VDA and, on the other side, the client may also be liable to deduct tax under section 194J as he is making payment in form of VDA for services provided by the architect.

Deposit of TDS

By specified person - Tax deducted under this provision is required to be deposited to the credit of the Central Government through Form 26QE within 30 days from the last day of the month in which the tax has been deducted.

By others – Tax deducted under this provision is required to be deposited to the credit of the Central Government through Challan ITNS 281 within 7 days from the end of the month in which the tax was deducted. However, the tax deducted during the month of March shall be deposited by 30th April of the next financial year.

Filing of TDS statement

By specified person - Where the person responsible for the deduction of tax at source under this provision is a specified person, he is required to file a challan-cum-statement in Form 26QE.

By others – Where the person responsible for the deduction of tax at source under this provision is not a specified person, he is required to file a statement of tax deducted at source in Form 26Q quarterly.

TDS Certificate

By specified person – The deductor (specified person) shall issue a TDS certificate to the assessee in Form No. 16E within 15 days from the due date of furnishing of the challan-cum-statement in Form No. 26QE.

By others - The deductor (other than a specified person) shall issue a TDS certificate to the assessee in Form No. 16A within 15 days from the due date of furnishing of the TDS statement.

Consequences for failure to deduct or deposit tax

Where any person responsible for deducting tax at source fails to deduct tax or after deducting fails to deposit the same, he shall be treated as assessee-in-default. In that case, interest under section 201 will be applicable.

If the deductor fails to deduct TDS, interest at the rate of 1% per month or part of the month shall be applicable, till such failure continues. Interest shall be calculated from the date when such tax was required to be deducted till the date such tax is actually deducted.

Further, if the deductor after having deducted the tax, fails to deposit the same to the credit of the Central Government, interest at the rate of 1.5% per month or part thereof shall be applicable till such failure continues. The interest computation shall commence from the date on which the tax was deducted and end with the date when such tax was deposited to the government.

Penalty and Prosecution

Failure to comply with the provisions of deduction of tax at source under this provision may result in penalties and prosecution as per the following provisions:

- a) If a person fails to deduct tax at source, he shall be liable for payment of penalty under Section 271C;
- b) If a person fails to ensure payment of tax, he shall be liable for payment of penalty under Section 271C and prosecution under Section 276B;
- c) If a person deducts tax but fails to deposit the same to the credit of the Central Government, he shall be liable for the penalty under Section 221 and prosecution under Section 276B.

However, no person shall be punishable under Section 276B if he proves that there was reasonable cause for the failure. Further, a person can also file an application for compounding of offence.

Consequences for failure to furnish TDS Statement

Where any person fails to furnish a TDS statement, section 234E shall be applicable, wherein the deductor is liable to pay fees at the rate of Rs. 200 per day during such default continues. However, such fees should not exceed the amount of TDS.

Moreover, he shall be liable for penalties under sections 271H of Rs. 10,000 which can be extended to Rs. 100,000, and 272A of Rs. 500 for every day during which failure continues.



Consequences for failure to issue TDS Certificates

Where any person, responsible for issuing TDS Certificates, fails to issue such certificates, a penalty under section 272A shall be applicable of Rs. 500 for every day during which failure continues.

INCOME TAX DEPARTMENT



MCQs on TDS on payment for the transfer of virtual digital assets (VDAs)

Q1. The tax under section 194S shall be deducted if the aggregate consideration payable by any person (other than a specified person) during the financial year exceeds _____.

- (a) Rs. 20,000
- (b) Rs. 10,000
- (c) Rs. 50,000
- (d) Rs. 5,000

Correct answer – (b)

Explanation: The tax shall be deducted under section 194S if the aggregate consideration payable by any person during the financial year exceeds Rs. 10,000 (Rs. 50,000 if consideration is payable by a specified person).

Q2. What is the tax rate for the deduction of tax under section 194S?

- (a) 5%
- (b) 10%
- (c) 1%
- (d) 0.1%

Correct answer – (c)

Explanation: The tax shall be deducted under section 194S at the rate of 1% of the consideration.

Q3. Who is responsible for the deduction of tax under section 194S where the buyer and seller of VDA know each other in an over-the-counter (OTC) deal?

- (a) Buyer
- (b) Seller

Correct answer – (a)

Explanation: Where the buyer and seller of virtual digital asset know each other in an over-the-counter (OTC) deal, the buyer shall deduct tax at source under section 194S.

Q4. Who is responsible for the deduction of tax under section 194S where VDAs are transferred through an Exchange and payment to the seller is made directly by the exchange?

- (a) Buyer
- (b) Seller
- (c) Exchange

Correct answer – (c)

Explanation: Where VDAs are transferred through an Exchange and payment to the seller is made directly by the exchange, In such cases, the exchange shall be liable to deduct tax at source under section 194S.

Q5. Which of the following TDS return is required to be furnished if tax is deducted by the specified person under section 194S?

- (a) 26Q
- (b) 27Q
- (c) 24Q
- (d) 26QE

Correct answer – (d)

Explanation: Where the person responsible for the deduction of tax at source under this provision is a specified person, he is required to file a challan-cum-statement in Form 26QE.

Q6. Tax deducted under section 194S by a specified person is required to be deposited to the credit of the Central Government through Form 26QE within _____ from the last day of the month in which the tax has been deducted.

- (a) 15 days
- (b) 7 days
- (c) 30 days
- (d) None of the above

Correct answer – (c)

Explanation: Tax deducted under section 194S by a specified person is required to be deposited to the credit of the Central Government through Form 26QE within 30 days from the last day of the month in which the tax has been deducted.

Q7. Which form is required to be issued as a TDS certificate if tax is deducted by a specified person under section 194S?

- (a) 16E
- (b) 16B
- (c) 16C
- (d) 16D

Correct answer – (a)

Explanation: The deductor (specified person) shall issue a TDS certificate to the assessee in Form No. 16E within 15 days from the due date of furnishing of the challan-cum-statement in Form No. 26QE.