DIRECT TAX (PAPER 15) – CIRCULARS & NOTIFICATION [01-06-2022 TO 30-11-2022]

Clarification issued by the CBDT on provision of sec. 194R [Circular No. 12/2022 dated 16/06/2022 read with Circular No. 18/2022 dated 13/09/2022]

1 **Is it necessary that the person providing benefit or perquisite needs to check if the amount is taxable under clause (iv) of section 28 of the Act, before deducting tax u/s 194R of the Act?**

Ans. No

2. **Is it necessary that the benefit or perquisite must be in kind for section 194R of the Act to operate?**

Ans. Tax u/s 194R is required to be deducted whether the benefit or perquisite is in cash or in kind

3. **Whether sales discount, cash discount and rebates are benefit or perquisite?**

Ans. Sales discounts, cash discount or rebates allowed to customers from the listed retail price represent lesser realization of the sale price itself. To that extent, purchase price of the customer is also reduced.

Logically these are also benefits though related to sales/purchase. Since TDS u/s 194R is applicable on all forms of benefit/perquisite, tax is required to be deducted. However, it is seen that subjecting these to tax deduction would put seller to difficulty. To remove such difficulty, it is clarified that no tax is required to be deducted u/s 194R on sales discount, cash discount and rebates allowed to customers.

There could be another situation, where a seller is selling its items from its stock in trade to a buyer. The seller offers two items free with purchase of 10 items. In substance, the seller is actually selling 12 items at a price of 10 items. Let us assume that the price of each item is ₹12. In this case, the selling price for the seller would be ₹ 120 for 12 items. For buyer, he has purchased 12 items at a price of ₹ 10. Just like seller, the purchase price for the buyer is ₹ 120 for 12 items and he is expected to record so in his books. In such a situation, again there could be difficulty in applying section 194R provision. Hence, to remove difficulty it is clarified that on the above facts no tax is required to be deducted u/s 194R.

However, it is clarified that situation is different when free samples are given and the above relaxation would not apply to a situation of free samples.

Similarly, this relaxation should not be extended to other benefits provided by the seller in connection with its sale. E.g., when a person sponsors a trip for the recipient and his/her

relatives upon achieving certain targets or when a person provides free ticket for an event.

The relaxation provided from non-deduction of tax for sales discount and rebate is only on those items and should not be extended to others.

It is further clarified that these benefits/perquisites may be used by owner/director/employee of the recipient entity or their relatives who in their individual capacity may not be carrying on business or exercising a profession. However, the tax is required to be deducted by the person in the name of recipient entity since the usage by owner/director/employee/relative is by virtue of their relation with the recipient entity and in substance the benefit/perquisite has been provided by the person to the recipient entity.

To illustrate, the free medicine sample may be provided by a company to a doctor who is an employee of a hospital. The TDS u/s 194R is required to be deducted by the company in the hands of hospital as the benefit/perquisite is provided to the doctor on account of him being the employee of the hospital. Thus, in substance, the benefit/perquisite is provided to the hospital. The hospital may subsequently treat this benefit/perquisite as the perquisite given to its employees (if the person who used it is his employee) u/s 17 and deduct tax u/s 192. In such a case it would be first taxable in the hands of the hospital and then allowed as deduction as salary expenditure. Thus, ultimately the amount would get taxed in the hands of the employee and not in the hands of the hospital. Hospital can get credit of tax deducted u/s 194R by furnishing its tax return. It is further clarified that the threshold of ₹ 20,000 is also required to be seen with respect to the recipient entity. Similarly, the tax is required to be deducted u/s 194R if the benefit or perquisite is provided to a doctor who is working as a consultant in the hospital. In this case the benefit or perquisite provider may deduct tax u/s 194R with hospital as recipient and then hospital may again deduct tax u/s 194R for providing the same benefit or perquisite to the consultant.

To remove difficulty, as an alternative, the original benefit or perquisite provider may directly deduct tax u/s 194R in the case of the consultant as a recipient.

The provision of section 194R of the Act shall not apply if the benefit or perquisite is being provided to a Government entity, like Government hospital, not carrying on business or profession.

4. How is the valuation of benefit/perquisite required to be carried out?

Ans. The valuation would be based on fair market value of the benefit or perquisite except in following cases:-

(i) The benefit/perquisite provider has purchased the benefit/perquisite before providing it to the recipient. In that case the purchase price shall be the value for such benefit/perquisite.

(ii) The benefit/perquisite provider manufactures such items given as benefit/perquisite, then the price that it charges to its customers for such items shall be the value for such benefit/perquisite.

It is further clarified that GST will not be included for the purposes of valuation of benefit/perquisite for TDS u/s 194R.

5. Many a times, a social media influencer is given a product of a manufacturing company so that he can use that product and make audio/video to speak about that product in social media. Is this product given to such influencer a benefit or perquisite?

Ans. Whether this is benefit or perquisite will depend upon the facts of the case. [n case of benefit or perquisite being a product like car, mobile, outfit, cosmetics etc. and if the product is returned to the manufacturing company after using for the purpose of rendering service, then it will not be treated as a benefit/perquisite for the purposes of sec. 194R. However, if the product is retained then it will be in the nature of benefit/perquisite and tax is required to be deducted accordingly u/s 194R.

6. Whether reimbursement of out of pocket expense incurred by service provider in the course of rendering service is benefit/perquisite?

Ans. Any expenditure which is the liability of a person carrying out business or profession, if met by the other person is in effect benefit/perquisite provided by the second person to the first person in the course of business/profession.

Let us assume that a consultant is rendering service to a person "X" for which he is receiving consultancy fee. In the course of rendering that service, he has to travel to different city from the place where is regularly carrying on business or profession. For this purpose, he pays for boarding and lodging expense incurred exclusively for the purposes of rendering the service to "X". Ordinarily, the expenditure incurred by the consultant is part of his business expenditure which is deductible from the fee that he receives from company "X". In such a case, the fee received by the consultant is his income and the expenditure incurred on travel is his expenditure deductible from such income in computing his total income. Now if this travel expenditure is met by the company "X", it is benefit or perquisite provided by "X" to the consultant.

However, sometimes the invoice is obtained in the name of "X" and accordingly, if paid by

the consultant, is reimbursed by "X". In this case, since the expense paid by the consultant (for which reimbursement is made) is incurred wholly and exclusively for the purposes of rendering services to "X" and the invoice is in the name of "X", then the reimbursement made by "X" being the service recipient will not be considered as benefit/perquisite for the purposes of section 194R. If the invoice is not in the name of "X" and the payment is made by "X" directly or reimbursed, it is the benefit/perquisite provided by "X" to the consultant for which deduction is required to be made u/s 194R.

In GST, if service provider incurs an expense as "pure agent", then GST input credit is allowed to service recipient and not to service provider. Broadly speaking a pure agent is one who while making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursement (as actual, without adding it to the value of his own supply) for such supplies from the recipient of the main supply. While the relationship between them (provider of service and recipient of service) in respect of the main service is on a principal to principal basis, the relationship between them in respect of other ancillary services is that of a pure agent.

The GST valuation rules provide that expenditure incurred as a pure agent, will be excluded from the value of supply, and thus also from aggregate turnover. However, such exclusion of expenditure incurred as a pure agent is possible only and only if all the conditions required to be considered as a pure agent and further conditions stipulated in the rules are satisfied by the supplier in each case. The supplier would have to satisfy the following conditions (in addition to the condition required to be satisfied to be considered as a pure agent) for exclusion from the value as under:-

i. the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorization by such recipient;
ii. the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
iii. the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

In case these conditions are not satisfied, such expenditure incurred is included in the value of supply under GST. However, in the abovementioned case of "pure agent", if all the conditions are satisfied, the GST input credit is allowed to the recipient and it is not

considered as supply of the pure agent, it is clarified that amount incurred by such "pure agent" for which he is reimbursed by the recipient would not be treated as benefit/perquisite for the purpose of section 194R of the Act.

However, if out of pocket expenses (reimbursement) are already part of the consideration in the bill on which tax is deducted under the relevant provisions of the Act, other than sec. 194R, in accordance with the Circular No 715 dated 8th August 1995, it is clarified that there will not be further liability for tax deduction u/s 194R

7. If there is a dealer conference to educate the dealers about the products of the company - Is it benefit/perquisite?

Ans. The expenditure pertaining to dealer/business conference would not be considered as benefit/perquisite for the purposes of section 194R in a case where dealer/business conference is held with the prime object to educate dealers/customers about any of the following or similar aspects:

(i) new product being launched
(ii) discussion as to how the product is better than others
(iii) obtaining orders from dealers/customers
(iv) teaching sales techniques to dealers/customers
(v) addressing queries of the dealers/customers
(vi) reconciliation of accounts with dealers/customers

However, such conference must not be in the nature of incentives/benefits to select dealers/customers who have achieved particular targets.

Further, in the following cases the expenditure would be considered as benefit or perquisite for the purposes of section 194R:-

(i) Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer / business conference.
(ii) Expenditure incurred for family members accompanying the person attending dealer / business conference
(iii) Expenditure on participants of dealer/business conference for days which are on account of prior stay or overstay beyond the dates of such conference.

It is further clarified that

(i) it is not necessary that all dealers are required to be invited in a dealer/business conference for the expenses to be not considered as benefit/perquisite for the purposes of tax deduction u/s 194R.

(ii) Expenditure on participants of dealer/business conference for days which are on account of over stay prior to the dates of conference or beyond the dates of such conference would be considered as benefit/perquisite for the purposes of section 194R of the Act. However, a day immediately prior to actual start date of conference and a day immediately following the actual end date of conference would not be considered as over stay.

(iii) Further, there may be expenses during such dealer/business conference which need to be classified as benefit/perquisite and tax is required to be deducted under section 194R of the Act. However, there may be practical difficulties in identifying such benefit/perquisite to actual recipient due to the fact that it is a group activity and reasonable allocation is not possible. Noncompliance of the provision of section 194R of the Act, in such a case, would not only result in disallowance under clause (ia) of section 40 of the Act but may also result in treating the benefit/perquisite provider as assessee in default under section 201 of the Act with all other consequences.

In order to remove these practical difficulties, it is clarified that if benefit/perquisite is provided in a group activity in a manner that it is difficult to match such benefit/perquisite to each participant using a reasonable allocation key, the benefit/perquisite provider may at his option not claim the expense, representing such benefit/perquisite, as deductible expenditure for calculating his total income. If he decides to opt so, he will not be required to deduct tax u/s 194R on such benefit/perquisite and therefore he will not be treated as assessee in default u/s 201 of the Act. Thus, in such a case he must add back the expenditure, representing such benefit/perquisite, to calculate his total income if such expenditure is debited in the account.

8. Section 194R provides that if the benefit/perquisite is in kind or partly in kind (and cash is not sufficient to meet TDS) then the person responsible for providing such benefit or perquisite is required to ensure that tax required to be deducted has been paid in respect of the benefit or perquisite, before releasing the benefit or perquisite. How can such person be satisfied that tax has been deposited?

Ans. The requirement of law is that if a person is providing benefit in kind to a recipient and tax is required to be deducted u/s 194R, the person is required to ensure that tax required to be deducted has been paid by the recipient. Such recipient would pay tax 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 recipient confirming that the tax required to be deducted on the benefit/perquisite has been deposited. This would be then required to be reported in TDS

return along with challan number. This year Form 26Q has included provisions for reporting such transactions.

In the alternative, as an option to remove difficulty if any, the benefit provider may deduct the tax u/s 194R and pay to the Government. The tax should be deducted after taking into account the fact the tax paid by him as TDS is also a benefit u/s 194R. In the Form 26Q he will need to show it as tax deducted on benefit provided.

Further, a question is also arise that where Company "A" gifts a car to its dealer "B" and deducted tax on this benefit under section 194R, Dealer "B" uses this car in his business. Will he get deduction for depreciation in calculating his income under the head "profits and gains of business or profession"?

In this regard, it is clarified that once Company "A" has deducted tax on gifting of car in accordance with section 194 R of the Act (or released the car after dealer "B" showed him payment of tax on such benefit) and dealer "B" has included this benefit as income in his income tax return, it would be deemed that the "actual cost" of the car for the purposes of section 32 of the Act shall be the amount of benefit included by dealer "B" as income in his income-tax return. Hence, dealer "B" can get depreciation on fulfillment of other conditions for claiming depreciation.

9 Whether Embassy/High Commissions are required to deduct tax under section 194R of the Act?

Ans. For the removal of difficulty it is clarified that the provision of section 194R is not applicable on 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 (such as the Asian Development Bank Act 1966), an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state

10. Whether issuance of bonus share/right share is a benefit or perquisite if issued by a company in which the public are substantially interested as defined in sec. 2(18) and whether tax is required to be deducted u/s 194R of the Act?

Ans. In case of bonus shares which are issued to all shareholders by a company in which the public are substantially interested as defined in sec. 2(18), it has been represented that this does not result in any benefit to shareholders as the overall value and ownership of their holding does not change. Further cost of acquisition of bonus share is taken as nil for capital gains computation when this share is sold.

Similar representations have been received seeking clarity on issuance of right shares. It is clarified that the tax u/s 194R is not required to be deducted on issuance of bonus or right shares by a company in which the public are substantially interested, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company, as the case may be.

11. If loan settlement/waiver by a bank is to be treated as benefit/perquisite, it would lead to hardship as the bank would need to incur the additional cost of tax deduction in addition to the haircut that he has taken. Will section 194R of the Act apply in such a situation?

Ans. It is true that waiver or settlement of loan by the bank may be an income to the person who had taken the loan. It is also true that subjecting such a transaction to tax deduction u/s 194R would put extra cost on such bank, as this would require payment of tax by the deductor in addition to him taking a haircut already. Hence, to remove difficulty, it is clarified that one-time loan settlement with borrowers or waiver of loan granted on reaching settlement with the borrowers would not be subjected to TDS u/s 194R.

As stated earlier, this clarification is only for the purposes of sec. 194R. The treatment of such settlement/waiver in the hands of the person who had got benefitted by such waiver would not be impacted by this clarification. Taxability of such settlement/waiver in the hands of the beneficiary will be governed by the relevant provisions of the Act

Clarification issued on provision of sec. 194S vide Circular No. 13/2022 dated 22/06/2022 read with Circular No. 14/2022 dated 28/06/2022

1 Who is required to deduct tax when the transfer of VDA is taking place on or through an Exchange and payment is made by the purchaser to the Exchange (directly or through broker) and then from the Exchange it goes to seller directly or through the broker?

Ans. According to sec. 194S, 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. direct buyer to seller) transaction, the buyer (i.e., person paying the consideration) is required to deduct tax u/s 194S.

However, if the transaction is taking place on or through an Exchange there is a possibility of tax deduction requirement u/s 194S at multiple stages. Hence, in order to remove difficulties for transactions taking place on or through an Exchange, the following

clarifications are issued:-

(i) ***In a case where the transfer of VDA takes place on or through an Exchange and the VDA being transferred is owned by a person other than the Exchange***:

In this case buyer would be crediting or making payment to the Exchange (directly or through a broker). The Exchange then would be required to credit or make payment to the owner of VDA being transferred, either directly or through a broker. Since there are multiple players, to remove difficulty it is clarified that:

1. Tax may be deducted u/s 194S only by the Exchange which is crediting or making payment to the seller (owner of the VDA being transferred). In a case where broker owns the VDA, it is the broker who is the seller. Hence, the amount of consideration being credited or paid to the broker by the Exchange is also subject to tax deduction u/s 194S.
2. In a case where the credit/payment between Exchange and the seller is through a broker (and the broker is not seller), the responsibility to deduct tax under section 194S of the Act 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 credit/payment, then broker alone may deduct the tax under section 194S of the Act. 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 prescribed in the Income-tax Rules, 1962.

(ii) ***In a case where the transfer of VDA takes place on or through an Exchange and the VDA being transferred is owned by such Exchange***:

In this case there are no multiple players. The buyer is required to deduct tax under section 194S of the Act. However, there may be a practical issue as the buyer may not know whether the VDA being transferred is owned by the Exchange or not. Hence, there may be genuine doubt in the mind of buyer with regard to its responsibility to deduct tax under section 194S of the Act. This difficulty would also be there if the buyer is buying VDA from an Exchange through a broker.

To remove this difficulty, it is clarified that while the primary responsibility to deduct tax under section 194S of the Act, in this case, remains with the buyer or his broker, 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. 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 prescribed

in the Income-tax Rules, 1962. The Exchange would also be required to furnish its income tax return and all these transactions must be included in such return. If these conditions are complied with, the buyer or his broker would not be held as assessee in default under section 201 of the Act for these transactions.

For the purpose of this circular,-

(i) The term "Exchange" means 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.

(ii) The term "Broker" means any person that operates an application or platform for transferring of VDAs and holds brokerage account/accounts with an Exchange for execution of such trades.

2. Question no 1 was with respect to transactions where the consideration for transfer of VDA is not in kind. How will this operate in a situation where it is in kind or in exchange of another VDA?

Ans. According to proviso to sec. 194S(1), there could be situations 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 these situations, 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.

In the above situation, 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. This year Form No. 26Q has included provisions for reporting such transactions. For specified persons, Form No. 26QE has been introduced.

However, if the transaction is through an Exchange there is practical issue in implementing this provision. In order to address this practical issue and to remove difficulty, it is clarified that in such a situation, as an alternative, tax may be deducted by the Exchange. Such an alternative mechanism can be exercised by the Exchange based on written contractual agreement with the buyers/sellers.

If such an alternative mechanism is exercised,

i. the Exchange would be required to deduct tax for both legs of the transactions and pay to the Government. In the Form 26Q it will, for the reasons explained before, need to report it as tax deducted on both legs of the transaction.
ii. the buyer and seller would not be independently required to follow the procedure prescribed in proviso to sec. 194S(1).

When the Exchange opts for deduction of tax under section 194S of the Act on such transactions, there is also a possibility that the tax amount deducted is also in kind and needs to be converted into cash before it can be deposited with the Government. In this regard, the following mechanism shall be adopted by the Exchange

i. At the time of transaction, the Exchange will deduct TDS in the pair being traded. For example, in case of trade for Monero to Deso, 1% of Monero and 1% Deso will be deducted as tax under section 194S of the Act by the Exchange and balance shall be transferred to the customer. The trail of transactions evidencing deduction of 1% of consideration for every VDA to VDA trade shall be maintained by the Exchange.
ii. The Exchanges shall immediately execute a market order for converting this tax deducted in kind (1% Monero / 1% Deso in the above example) to one of the primary VDAs (BT, ETH, USDT, USDC) which can be easily converted into INR. This step will ensure that the tax deducted under section 194S of the Act in the form of non-primary VDAs like Deso/Monero is converted to an equivalent of primary VDAs which have a ready INR market. Time stamps of timing of orders to be maintained to ensure such conversion of VDAs withheld to be done on immediate basis by the Exchange. If the taxes are withheld in primary VDAs, this step would be ignored.
iii. All the tax deducted under section 194S of the Act in the form of primary VDAs {or converted into primary VDA under step (ii)} will be accumulated for the day. Time limit will be from 00:00 hours to 23:59 hours. VDA accumulation by the Exchange shall be verifiable from the trail of orders for VDA to VDA trades executed during the day.
iv. The accumulated balance of primary VDAs at 00.00 hours will be converted into INR based on the market rate existing at that time. In order to bring in consistency and to avoid discretion, the Exchanges are required to place market order at 00:00 hours for the tax withheld {or converted under step (ii)} in form of primary VDAs for conversion into INR. These sell market orders shall be executed based on the open buy orders in the market. Price and quantity data for every matched trade shall be maintained by the Exchange and shall be available for verification. It shall be verifiable from the system

coding that the conversion into INR happened at the first available buy order based on the prevailing buy order book of the respective Exchange at the time of conversion. As a practice, the respective Exchange liquidating the VDA shall be prohibited to be a buyer for these VDAs.

v. 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.

vi. The tax withheld in kind under section 194S of the Act and converted into INR by following the above procedure shall be deposited in the Government Account as per the time line and process given in the Income-tax Rules 1962.

It is clarified that there would not be any further TDS for converting the tax withheld in kind in the form of VDA into INR or from one VDA to another VDA and then into INR.

3. How will this operate in a situation where it is in kind or in exchange of another VDA?

Ans. 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, 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. 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.

4. Whether the provision of section 194Q of the Act is also applicable on transfer of VDA?

Ans. 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.

5. Whether the consideration for transfer of VDA shall be on Gross basis after including GST/commission or it shall be on "net basis" after exclusion of these items.

Ans. In order to remove difficulty, it is clarified that the tax required to be withheld under section 194S of the Act shall be on the "net" consideration after excluding GST/charges levied by the deductor for rendering service.

6. In transactions where payment is being carried out through payment gateways, there may be tax deduction twice. To illustrate that a person 'XYZ' is required to make payment to the seller for transfer of VDA. He makes payment of one lakh rupees through digital platform of "ABC". On these facts liability to deduct tax under section 194S of the Act may fall on both "XYZ" and "ABC. Is tax required to be deducted by both?

Ans. In order to remove this difficulty, it is provided that in the above example, the payment gateway will not be required to deduct tax under section 194S of the Act on a transaction, if the tax has been deducted by the person ('XYZ') required to make deduction under section 194S of the Act. Hence, in the above example, if "XYZ" has deducted tax under section 194S of the Act on one lakh rupees, "ABC" will not be required to deduct tax under section 194S of the Act on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from "XYZ" regarding deduction of tax.

Exclusion from the definition of virtual digital asset [Notification No. 74/2022 dated 30-06-2022]

The Central Government notifies following virtual digital assets which shall be excluded from the definition of virtual digital asset:

a. Gift card or vouchers, being a record that may be used to obtain goods or services or a discount on goods or services;
b. Mileage points, reward points or loyalty card, being a record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate or promotional program that may be used or redeemed only to obtain goods or services or a discount on goods or services;
c. Subscription to websites or platforms or application.

Meaning of Token for the definition of virtual digital asset [Notification No. 75/2022 dated 30-06-2022]

The Central Government specifies a token which qualifies to be a virtual digital asset as non-fungible token within the meaning of sec. 2(47A)(a) but shall not include a nonfungible token whose transfer results in transfer of ownership of underlying tangible asset and the transfer of ownership of such underlying tangible asset is legally enforceable.

International Sporting Event notifies u/s 10(39) [Notification No. 126/2022 dated 30-11-2022]

The Central Government notifies the following as the international sporting event, persons and specified income for the purposes of sec. 10(39): -

a) Federation Internationale de Football Association Under-17 Women's World Cup, 2022 as the international sporting event;
b) the Federation Internationale de Football Association, as the person;
c) income arising from the receipts from National supporters namely; Hero Motocorp Ltd., the Department of Tourism, Government of Odisha, the National Thermal Power Corporation Limited and the Power Grid Corporation of India Limited - ₹ 12 crores and 50 lakhs only as specified income arising to Federation Internationale de Football Association, from organising the Federation Internationale de Football Association, Under-17 Women's Football World Cup, 2022 in India.

Notifying Bullion Depository Receipt with underlying bullion u/s 47(viiab)(d) [Notification No. 89/2022 dated 03-08-2022]

Bullion Depository Receipt with underlying bullion are notified for the purpose of sec. 47(viiab)(d) by the Central Government.

Conditions for claiming exemption in respect of COVID 19 related receipt u/s 56(2)(x) [Notification No. 92/2022 dated 05-08-2022]

The Central Government specifies the following conditions:

i. the death of the individual should be within six months from the date of testing positive or from the date of being clinically determined as a COVID-19 case, for which any sum of money has been received by the member of the family;

ii. the family member of the individual shall keep a record of the following documents:
   a) the COVID-19 positive report of the individual, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an inpatient facility by a treating physician;
   b) a medical report or death certificate issued by a medical practitioner or a Government civil registration office, in which it is stated that death of the person is related to corona virus disease (COVID-19).

Non-applicability of provision of sec. 206C(1G) [Notification No. 99/2022 dated 17/08/2022]

The Central Government notifies that the provisions of sec. 206C(1G) shall not apply to a person (being a buyer) who is a non-resident and who does not have a permanent establishment in India.

Application Form for PAN

Generally, for obtaining PAN, one has to apply in Form 49A. However, Specified applicant may apply for allotment of PAN through a common application form notified by the Central Government:

- At the time of incorporation of the Company: SPICe+ and
- At the time of incorporation of the LLP: FiLLiP

Quotation of PAN/Aadhar

Following are specified transactions (further PAN or Aadhar number is required to be quote on any document pertaining to such transactions)

1. Cash deposit or deposits aggregating to ₹20 lakh or more in a financial year, in one or more account of a person with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies or a Post Office;
2. Cash withdrawal or withdrawals aggregating to ₹20 lakh or more in a financial year, in one or more account of a person with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies or a Post Office;

3. Opening of a current account or cash credit account by a person with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies or a Post Office

However, the rule is not applicable in case of the Central Government, the State Government or the Consular Office

Reduction of time for submitting ITR-V

1. W.e.f. 01-08-2022. in respect of any electronic transmission of return data, the return should be verified through e-verification or submission of ITR-V. Such verification should be done within 30 days [earlier 120 days] from the date of transmitting/uploading the data of return of income electronically.

Further, where ITR data is electronically transmitted and e-verified/lTR-V submitted within 30 days of transmission of data - in such cases the date of transmitting the data electronically shall be considered as the date of furnishing the return of income. However, where ITR data is electronically transmitted but e-verified or ITR-V submitted beyond the time-limit of 30 days of transmission of data - in such cases the date of e-verification/ITR-V submission shall be treated as the date of furnishing the return of income and all consequences of late filing of return under the Act shall follow.