

RECENT CHANGES UNDER TDS



CA Hardik Saiya
Email : hardik@kdsca.com

In the dynamic landscape of Indian taxation, the meticulous expertise of Chartered Accountants (CAs) plays a pivotal role, ensuring financial compliance and proficiency. Against the backdrop of the nation's evolving economic framework, recent alterations in Tax Deducted at Source (TDS) have emerged as a focal point for financial practitioners

This article endeavors to dissect the intricacies of the latest modifications in India's TDS landscape, empowering CAs with the knowledge to navigate the shifting terrain of fiscal responsibility with precision and acumen.

TDS on transfer of digital assets - 194S

Under Budget 2022, Finance Minister Nirmala Sitharaman introduced Section 194S to impose TDS on the transfer of cryptocurrency and other Virtual Digital Assets (VDAs) with an objective to widen tax base and to bring these assets under the tax net. In the recent times, Virtual Digital Assets have gained tremendous popularity. Section 194S was effective from 1st July 2022. Further, amendments have been made in section 56 to provide for taxing of these assets by way of gift.

Section 194S requires the buyer of such digital assets to deduct 1% of consideration from any resident person. Such deduction is to be made at the time of credit of consideration to the account of the resident or at the time of payment of such sum by any mode, whichever is earlier.

Non-applicability of TDS under section 194S – No tax is required to be deducted under section 194S, where the consideration is payable by the person referred to in column (2) of the table below and aggregate value of such consideration during the financial year does not exceed the threshold limit in the corresponding row of column (3) of the table below:

Consideration is payable by	Threshold limit
Specified person, being an individual or a Hindu undivided family: <ul style="list-style-type: none"> • whose total sales, gross receipts or turnover from his business or profession does not exceed ` 1 crore in case of business or ` 50 lakhs in case of profession, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred; or • not having any income under the head “Profits and gains of business or profession”. 	≤ Rs. 50,000
Other than specified person mentioned in (i) above	≤ Rs. 10,000

Payer	Payee	Rate	Exemption Limit	Timing of Deduction
Any Person (Buyer)	Any Resident Person	1% of Consideration	Rs. 50,000 for Specified Person Rs. 10000 for Other Person (in aggregate during FY)	<ul style="list-style-type: none"> At the time of credit of consideration to the account of the resident or At the time of payment of such sum by any mode, whichever is earlier

Specified person, being an individual or a Hindu undivided family:

- whose total sales, gross receipts or turnover from his business or profession does not exceed ` 1 crore in case of business or ` 50 lakhs in case of profession, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred; or
- not having any income under the head “Profits and gains of business or profession”.

Section 194B: TDS on winning from lottery or crossword puzzle:

This section applies to any income of winnings from lottery or crossword puzzle or card game and other game of any sort or gambling or betting of any form. From the money paid for winnings from the lottery, crossword puzzles, card games, and other similar incomes, the payer should deduct 30% TDS if the amount exceeds Rs.10,000. The TDS must be deducted when the winning amount is paid. Where winning is wholly in kind or partly in cash and partly in kind and, cash is not sufficient for TDS – such person shall not release winnings unless tax is paid in respect of such winning i.e. the person giving the winnings should take the amount of TDS from the receiver of gift then only pass on the winnings to such person.

Payer	Any Person
Payee	Any Person
Rate	30%
Exemption Limit	Rs. 10,000 (in aggregate during FY)
Income:	Any income of winnings from lottery or crossword puzzle or card game and other game of any sort or gambling or betting of any form. Online gaming not covered here. It is covered separately u/s 194BA. [FA 2023]
If no sufficient cash?	Where winning is wholly in kind or partly in cash and partly in kind and, cash is not sufficient for TDS – such person shall not release winnings unless tax is paid in respect of such winning.

Section 194BA: Winning from Online games:

The Definition of online game: Online game means a game that is offered on the internet and is accessible to the user through a computer resource including any telecommunication device.

This Section was introduced in Budget 2023 to cover all the online games in a separate section. Previously, such winnings from online games were taxable under Section 194B. It was made applicable from 1st July 2023. The payer shall deduct TDS at the rate of 30% from the **net winnings** of the user account. The payer shall deduct TDS at the end of financial year and not on payment or credit. In case of withdrawal of winnings during the Financial Year the payer must deduct TDS at time of such withdrawal in prescribed manner in Rule 133 of the Income Tax Rules. Only Rs. 10000 of winnings are exempt under this section.

Whenever there is payment to the user in kind or in cash, or partly in kind and partly in cash, which is not from the user account, the provisions of rule 133 shall apply to calculate net winnings by deeming that the money equivalent to such payment has been deposited as taxable deposit in the user account and the equivalent amount has been withdrawn from the user account at the same time and shall accordingly be included in amount withdrawn from the user account in calculation of net winnings.

Payer	Any Person
Payee	Any Person
Rate	30% on net winnings on his user account.
Threshold Limit	Rs. 10,000 (in aggregate during FY)
Income?	Winnings from any online game during the FY
If no sufficient cash?	Where net winnings is wholly in kind or partly in cash and partly in kind and, cash is not sufficient for TDS – such person shall not release winnings unless tax is paid in respect of such winning.
Timing of Deduction	The payer shall deduct TDS at the end of FY and not on payment or credit. In case of withdrawal of winnings during the Financial Year the payer has to Deduct TDS at time of such withdrawal in prescribed manner in Rule 133 of the Income Tax Rules

Difficulties of TDS on non-filers of ITR

In the budget of 2021, a new provision was inserted to provide for a higher tax deduction at source (TDS) rate from payments to persons who have not filed their returns of income (non-filers). Section 206AB becomes applicable to people who haven't filed their income tax returns. Section 206AB requires tax to be deducted at source under the provisions of this Chapter on any sum or income or amount paid, or payable or credited, by a person to a specified person, at higher of the following rates –

- at twice the rate prescribed in the relevant provisions of the Act;
- at twice the rate or rates in force i.e., the rate mentioned in the Finance Act; or
- at 5%

However, section 206AB is not applicable in case of tax deductible at source under sections 192, 192A, 194B, 194BA, 194BB, 194-IA, 194-IB, 194LBC, 194M and 194N. (2) In case the provisions of section 206AA are also applicable to the specified person, in addition to the provisions of this section, then, tax is required to be deducted at higher of the two rates provided in section 206AA and section 206AB.

At the time of deduction of tax, it is pertinent for the tax deductor to verify on the reporting portal to verify whether the payee falls within the ambit of this section. The deductor, can check for this on an individual deductee basis or using the bulk verification facility available on the portal.

Specified person means a person who has not furnished the return of income –

- for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted, for which the time limit for furnishing the return of income under section 139(1) has expired and
- the aggregate of tax deducted at source and tax collected at source in his case is Rs. 50,000 or more in the said previous year.

However, the specified person does not include a non-resident who does not have a permanent establishment in India or a person and who is not required to furnish the return of income for the assessment year relevant to the previous year and is notified by the Central Government.

