# TDS under Section 194 R and 194 S


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# Areas to be covered

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# Applicability of Section 194 R

- **Deduction of Tax on benefit or perquisite in respect of business or profession**

Proposed section **194 R** states, "Any person responsible for providing to a **resident**, any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession, by such resident, shall, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite at the rate of **ten per cent**. of the value or aggregate of value of such benefit or perquisite"

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# Applicability of Section 194 R (cont.)

Provided that in a case where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the **person responsible for providing*** such benefit or perquisite shall, before releasing the benefit or perquisite, ensure that tax has been paid in respect of the benefit or perquisite.

*The expression "**person responsible for providing**" means the person providing such benefit or perquisite, or in case of a company, the company itself including the principal officer thereof.'.

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# Rationale behind this TDS provision

**As per the Memorandum Explaining the provisions in the Finance Bill, 2022, the following has been stated regarding the proposed section:**

- As per **clause (iv)** of **section 28** of the Income Tax Act, the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is to be charged as business income in the hands of the recipient of such benefit or perquisite.

- In many cases, such recipient does not report the receipt of benefits in their return of income, leading to furnishing of incorrect particulars of income.

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# Non- Applicability of Section 194 R

- No tax is to be deducted if the value or aggregate value of the benefit or perquisite paid or likely to be paid to a **resident** does not exceed **twenty thousand** rupees during the financial year.

- This section shall not apply to an individual or a Hindu undivided family, whose total sales, gross receipts or turnover does not exceed **one crore** rupees in case of business or **fifty lakh** rupees in case of profession, during the financial year immediately preceding the financial year in which such benefit or perquisite, as the case may be, is provided.

- The benefit or perquisite referred to in section 194R does **not** cover perquisite u/s 17(2), under the head salary income, **paid or payable by the employer to employees**, as for that perquisite u/s 17(2), another TDS section 192 is already there.

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# Points to be Noted

- Section 194R is applicable from 01st July 2022.

- Gifts, perks or benefits provided on some special occasions like festivals (Eg. Diwali sweets), marriage occasions, etc. may not liable for tax deduction at source, as section 194R contemplates to cover only those benefits or perquisites, which arise out of business or profession.

- For calculating Aggregate limit of INR 20,000 financial year is to be considered as a whole and not period after 01/07/2022.

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# Applicability of Section 194 S

**TDS @ 1% on Purchase Consideration of Virtual Digital Asset**

Any person responsible for paying to a resident any sum by way of consideration for transfer of a virtual digital asset, shall, at the time of credit of such sum to the account of the resident or at the time of payment of such sum by any mode, whichever is earlier, deduct an amount equal to **one per cent** of such sum as income-tax thereon.

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# Definition of "Virtual Digital Asset"

- A **new clause (47A)** is proposed to be inserted to **section 2** of the Act. As per the proposed new clause, a virtual digital asset is proposed to mean
  - any information or code or number or token (not being Indian currency or any foreign currency), generated through cryptographic means or otherwise, by whatever name called,
  - providing a digital representation of value which is exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account and includes its use in any financial transaction or investment, but not limited to, investment schemes and
  - can be transferred, stored or traded electronically.
  - Non fungible token and; any other token of similar nature are included in the definition.

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# Applicability of Section 194 S (Cont.)

**Provided that in a case where the consideration for transfer of virtual digital asset is-**

a) wholly in kind or in exchange of another virtual digital asset, where there is no part in cash; or

b) 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 whole of such transfer, the person responsible for paying such consideration shall, before releasing the consideration, ensure that tax has been paid in respect of such consideration for the transfer of virtual digital asset.

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# Threshold limit for purchase consideration

- **No tax shall be deducted in a case, where-**

(a) 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

(b) 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.

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# Meaning of Specified Person

- **For the purposes of this section "specified person" means a person,-**

(a) being an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business carried on by him or profession exercised by him does not exceed **one crore** rupees in case of **business** or **fifty lakh** rupees in case of **profession**, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred;

(b) being an individual or a Hindu undivided family, not having any income under the head "**Profits and gains of business or profession**".

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# Non-Applicability of other provisions of Income tax Act

(a) If tax has been deducted under section 194S, then no tax is to be collected or deducted in respect of the said transaction under any other provision of **Chapter XVII** of the Act.

(b) In case of a transaction where tax is deductible under section **194-O** along with the proposed section 194S, then the tax shall be deducted under section 194S and not section 194-O.

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# Deemed provision

If any sum paid for transfer of virtual digital asset is credited to any account, whether called "**Suspense Account**" or by any other name, in the books of account of the person liable to pay such sum, such credit of the sum shall be **deemed** to be the credit of such sum to the account of the payee and the provisions of section **194S** shall apply accordingly.

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# Other proposed provisions on Virtual Digital Asset

- **Proposed section 115BBH:**

- This section seeks to provide that where the **total income** of an assessee includes any income from transfer of any virtual digital asset, the income tax payable shall be the aggregate of the amount of income-tax calculated on income of transfer of any virtual digital asset at the rate of **30%** and the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the aggregate of the income from transfer of virtual digital asset.

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# Other proposed provisions on Virtual Digital Asset

**No deduction** in respect of any expenditure (other than cost of acquisition) or allowance or set off of any loss shall be allowed to the assessee under any provision of the Act while computing income from transfer of such asset.

**No set off** of any loss arising from transfer of virtual digital asset shall be allowed against any income computed under any other provision of the Act and such loss shall not be allowed to be carried forward to subsequent assessment years

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# Other proposed provisions on Virtual Digital Asset

**For taxing the gifting of virtual digital assets:**

In order to provide for taxing the gifting of virtual digital assets, it is also proposed to amend Explanation to clause (x) of sub-section (2) of section 56 of the Act to inter-alia, provide that for the purpose of the said clause, the expression "property" shall have the meaning assigned to it in Explanation to clause (vii) and shall include virtual digital asset.

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# Points to be considered

- Virtual digital assets will be taxed under the head “Capital Gains” or under “Other Sources” is not yet clear. The bill proposes taxation of virtual digital asset similar to Section 115BB – Winning from the Lottery, Crossword Puzzle, Race, Games etc. which implies ‘Other Sources’, however, the bill also uses the term ‘Cost of Acquisition’ which implies Capital Gain. Therefore, there is still an ambiguity with respect to head of income under which income from virtual digital assets will be taxed.

- Seller of virtual digital asset is not known to a buyer of virtual digital asset, who will be responsible for paying the consideration, since the buy sell transactions happen only on the exchanges. Hence, the role of exchanges in these transactions needs to be clarified.

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# Points to be considered

- Fair Market Value needs to be determined for calculating the value of consideration in case of transfer in Kind (no cash transfer) or in case of gift of virtual digital asset. This Fair market value is different on different exchanges For eg. Value of Ether coin might be different on Binance and Coin DCX. Hence determining the Fair market value might be a challenge.

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# Thank You!!