

ERGO

Analysing developments impacting business

CBDT CLARIFIES TDS MECHANISM FOR P2P (PEER-TO-PEER) VDA TRANSACTIONS

28 June 2022

The Finance Act, 2022 (FA 2022) amended the Income-tax Act, 1961 (IT Act) by introducing a new taxation regime in relation to Virtual Digital Assets (VDAs) wherein: (i) a 30% tax has been levied on income from transfer of VDAs in the hands of the transferor; (ii) receipt of VDAs for nil or inadequate consideration has been made taxable in the hands of the recipient; and (iii) an obligation has been imposed (under Section 194S of the IT Act) on the persons responsible for paying any consideration to 'Indian residents' for transfer of VDAs to deduct tax at source (TDS) at 1% (with effect from 1 July 2022). Our *Ergo* on budget 2022 proposals can be accessed [here](#).

With respect to implementation of the 1% TDS obligation in relation to VDA transactions undertaken on exchanges (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), there were certain practical concerns and difficulties. To clarify some such aspects, the Central Board of Direct Taxes (CBDT), the apex body for direct tax administration in India, issued guidelines vide Circular No. 13 of 2022 dated 22 June 2022 (22 June Circular) – our *Ergo* summarizing the key aspects of the same can be accessed [here](#).

For all other VDA transactions (ie VDA transactions not covered by the 22 June Circular), the CBDT has issued clarifications vide Circular No. 14 of 2022 dated 28 June 2022 (New Circular). Key aspects of the same are summarized below:

➤ **TDS obligation when the consideration is other than in kind**

In such a case, the buyer of a VDA will be required to deduct 1% tax under section 194S of the IT Act and undertake certain compliances within prescribed timelines (such as pay the TDS to the Government of India, furnish a quarterly statement etc). It has been clarified that the TDS shall be on consideration for transfer of VDA less GST.

➤ **TDS obligation when the consideration is in kind or in barter for another VDA**

Where the consideration for VDA is in kind (ie non-monetary consideration), the buyer of VDA 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 of VDA will release the consideration in kind after the VDA seller provides proof of payment of such tax (for example – payment challan details).

Where the VDA is acquired in barter for another VDA, both the persons will be considered as a buyer as well as a seller. For instance, where VDA 'A' is being exchanged with another VDA 'B', both persons are a buyer as well as a seller. One is a buyer for 'A' and seller for 'B' and the other is a buyer for 'B' and seller for 'A'. In such a case, both persons will need to pay tax with respect to the transfer of the VDA and show the evidence to other so that the VDAs can then be exchanged. This will then be needed to be reported in the prescribed TDS form.

➤ **Interplay of Section 194Q (TDS on transfer of 'goods') with Section 194S**

Like the 22 June Circular, in the New Circular also, the CBDT has clarified that without evaluating whether VDA qualifies as 'goods' or not; in case tax is deducted on transfer of VDAs under Section 194S of the IT Act, no tax is required to be deducted again under Section 194Q of the IT Act.

Comments

The New Circular is in line with the principles that were clarified in the 22 June Circular. With the new 1% TDS obligation in relation to VDA transactions coming into force from 1 July 2022, both these circulars are welcome as they provide clarity with respect to several operational and practical aspects of VDA transactions - be it undertaken on an exchange or be it a peer-to-peer transaction (ie buyer to seller without going through an exchange). Given that VDAs have been defined widely to include notified non-fungible tokens (NFT) also, these clarifications should be helpful for NFT transactions too.

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