

## **Guidelines issued by CBDT for removal of difficulties under section 194S(6) of the Act**

Section 194S of the Act requires a person to deduct tax at source at 1% at the time of payment or credit of any sum to any resident as consideration for transfer of a virtual digital asset (VDA).

The CBDT issued guidelines<sup>10</sup> to remove difficulties in the implementation of section 194S of the Act. Some important aspects of the guidelines are discussed below:

a) Responsibility of deduction of tax where transfer of VDA is through an exchange or a broker

- Trade executed on an exchange where a broker is the seller – Tax may be deducted by the exchange that is crediting or making payment to the seller.
- Trade executed on an exchange where a broker is not the seller – In a case where the credit or payment between an exchange and a seller is through a broker (and the broker is not the seller), the broker can take the responsibility to deduct tax if there is a written agreement between the exchange and the broker that the broker will withhold tax.
- Trade executed on an exchange in cases where the VDA is owned by the exchange – In a case where the VDA being transferred is owned by an exchange, the primary responsibility to deduct tax is of the buyer or his broker. As an alternative, the exchange may enter into a written agreement with the buyer or his broker that, regarding all such transactions, the exchange would be paying the tax. The exchange would be required to furnish a quarterly statement (Form No. 26QF) for all such transactions of the quarter on or before the due date and furnish its income tax return, including all such transactions in the return.

b) Transfer of VDA for consideration in kind through an exchange or a broker

In case of transfer of VDA in kind or in exchange of another VDA through an exchange, while usually a buyer or seller is responsible for deducting tax, the exchange can take on the responsibility to deduct tax, based on a written contractual agreement with the buyer or seller. If such an alternative mechanism is exercised, the exchange would be required to deduct tax for both legs of the transactions and pay to the government.

c) Section 194Q of the Act vis-a-vis section 194S of the Act

Once tax is deducted under section 194S of the Act, tax would not be required to be deducted under section 194Q of the Act.

d) Consideration for withholding tax

It is clarified that the tax required to be deducted will be on the 'net' consideration after excluding the goods and services tax or charges levied by the deductor for rendering a service.

---

10 Circular No. 13 of 2022 dated 22 June 2022

*(Source: Assocham)*