Income Tax Department

Central Board of Direct Taxes

Virtual Digital Assets/Cryptocurrency

1. Introduction:

1.1 Virtual Digital Assets (VDA) refer to digital representations of value that can be digitally stored, traded, transferred, or used for payment. VDAs function as a medium of exchange; a unit of account; or a store of value, but do not have legal tender status in any jurisdiction. Cryptocurrencies like Bitcoin, Etherium etc. and Non Fungible Tokens (NFTs) are some examples of VDAs .

1.2 VDAs are based on Block chain technology that uses asymmetric cryptography (a pair of related keys) to secure information and record its details at multiple places at the same time using Distributed Ledger System, making digital asset immutable and their transactions transparent.

2. VDAs under the Income Tax Act, 1961:

2.1 VDAs are defined u/s 2(47A) of the Income Tax Act and include:

a. information or code generated through cryptographic means having a digital representation of value which can be transferred, stored or traded electronically;

b. a non-fungible token or a similar token;

c. any other digital asset, notified by the Central Government.

However, vide Notifications number 74 and 75 of 2022, following assets have been excluded from the definition of VDAs;

a. Gift card or vouchers used to obtain goods or services;

b. Mileage points, reward points or loyalty card given without direct monetary consideration used to obtain goods or services;

c. Subscription to websites or platforms;

d. A non-fungible token whose transfer results in the transfer of ownership of the underlying tangible asset, and such transfer is legally enforceable.

3. Taxation:

3.1 The taxation of VDAs was introduced vide Finance Act, 2022. Income from transfer of any virtual digital asset (whether capital or revenue in nature) is taxable at the rate of 30% u/s 115BBH and no deduction, other than cost of acquisition, is allowable in computing such income.

3.2 Any loss arising from transfer of virtual digital asset is not allowed to be set off against any other income earned and such loss is also not allowed to be carried forward to future years, for set off with any other income earned in future years.

3.3 VDAs are also taxable in the hands of recipient, at its fair market value if it exceeds Rs 50,000/- for a receipt without consideration or at the difference between consideration paid and fair market value, if such difference exceeds Rs 50,000/-.

4. Schedule VDA in ITR:

4.1 The new Income Tax Return (ITR) forms starting from the financial year 2022-23 have a dedicated section called Schedule - Virtual Digital Assets (VDA) for reporting gains from crypto/NFTs and other VDAs.

5. Withholding Tax:

5.1 Section 194S mandates that a person paying any sum (whether partly or wholly in kind) as consideration for transfer of a VDA (payer) is required to deduct TDS at the rate of 1% at the time of release of such consideration.

5.2 No TDS is required to be deducted in case the payer is a '***specified person***' and the value or aggregate of such value of consideration is less than Rs. 50,000/- during the financial year. For other than specified persons, cumulative payment limit in a financial year for non-deduction is Rs. 10,000/-.

5.3 If the payee does not furnish PAN, a higher rate of 20% is to be applied (u/s 206AA). Further, in case the payee has not filed return of income in the year previous to the year of transaction, higher rate of TDS is to be applied (u/s 206AB). In case both conditions apply, higher rate would be adopted. However, Specified Person need not obtain TAN or deduct TDS at higher rate u/s 206AB.

5.4 ***Specified person*** is either an individual or HUF, not having any business or professional income or individual or HUF having business turnover of less than one crore rupees or professional turnover of less than fifty lakh rupees in immediate previous financial year.

5.5 Circular Number 14 of 2022 clarifies applicability of TDS on certain transactions, as follows:

a. For peer to peer transactions, buyer will be responsible for deduction of TDS.

b. For part consideration in kind, buyer will release the consideration only when proof of tax payment on such consideration in kind, is provided to the buyer by the seller.

c. For exchange of VDAs, both buyer and seller would be liable for deduction. In this case both need to pay tax with respect to transfer of VDA and show the evidence to other so that VDAs can then be exchanged.

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

TDS Forms:

5.6 Various prescribed forms are:

a. **Form 26QE**: Challan with details of TDS deducted, to be filed by specified persons, within 30 days of the end of month of deduction.

b. **Form 26QF**: Quarterly TDS deduction statement to be filed by Exchange, for transfer of VDA, owned by it.

c. **Form 26Q**: Quarterly TDS deduction statement to be filed by all persons other than Exchange, covered by form 26QF.

d. **Form 18E**: Issue of certificate of deduction of tax u/s 194S, by the payer to the payee.

VDA transactions through Exchange:

5.7 Circular number 13 of 2022 clarifies TDS liabilities for transactions being executed through exchanges, with or without brokers. Following scenarios can arise:

a. Payment to the seller is made directly by the exchange. In such cases, the exchange shall be liable to deduct tax at source.

b. Payment is made to the seller through a broker. In such case, both the Exchange and the broker are liable to deduct tax at source. However, if there is a written agreement between the Exchange and the broker that the broker shall be deducting tax on such payment, the Exchange need not deduct the tax.

c. Where VDA being transferred is owned by the exchange itself, primary responsibility to deduct tax shall be of the buyer or his broker. However, as an alternative, the Exchange may enter into a written agreement with the buyer or his broker that for all such transactions. The Exchange would be paying the tax on or before the due date for that quarter.

d. Where one VDA is exchanged with another VDA through an Exchange, primary responsibility to deduct tax is of both buyer and the seller. But, as an alternative, the Exchange may deduct tax based on a written contractual agreement with the buyer and the seller. In some cases, tax deducted may also be in kind (being a part of the VDAs exchanged). In such scenarios, tax deducted in the form of VDAs is to be converted into cash for deposited with the Government, for which mechanisms are prescribed in the Circular.

It is further clarified that where payment for the transfer of VDA is made through payment gateways, the payment gateway will not be required to deduct tax if the tax has been deducted by the person required to make deduction under this provision. It has also been 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.

Penalty and Prosecution:

5.8 Failure to comply with provisions of deduction of tax at source may result in following penalties and prosecution:

a. Penalty under Section 271C for non-deduction, to the extent of such non-deduction.

b. Penalty under Section 221 for failure to deposit the same to the credit of the Central Government, to the extent of such non-payment and prosecution under Section 276B (3 months to 7 years).

c. However, no person shall be punishable under Section 276B if he proves that there was reasonable cause for the failure. Further, a person can also file an application for compounding of offence.

d. Penalty of Rs 10,000/- u/s 271H for failure to furnish TDS statement, which can be extended to Rs. 100,000/-.

e. Penalty of Rs. 500 for everyday u/s 272A, for failure to issue TDS certificate till the time failure continues.

Illustrations

S.no	Description	Exchange-Based Transactions	Peer-to-Peer (P2P) Transactions	Specified Person Obligation
1	**Payment made directly to the seller**	**Transaction:** Seller lists 2 BTC (FMV: ₹50,00,000; acquisition cost: ₹40,00,000). Buyer pays through exchange. **TDS:** Exchange deducts 1% TDS (₹50,000) and deposits it. **Income Tax:** ₹3,00,000 (Profit: ₹10,00,000 × 30%). **Amount Transferred:** ₹49,50,000.	**Transaction:** Seller transfers 1 BTC (FMV: ₹30,000; acquisition cost: ₹28,000) to Buyer. **TDS:** Buyer deducts 1% TDS (₹300) and deposits it. **Income Tax:** ₹600 (Profit: ₹2,000 × 30%). **Amount Transferred:** ₹29,700	**Exchange-Based:** Obligation exists regardless of the buyer's category. **P2P:** No obligation for buyers classified as "specified persons".
2	**Payment routed through a broker** in exchange-based or partially in-kind (goods + cash) in P2P.	**Transaction:** Seller lists 5 ETH (FMVF ₹10,00,000; acquisition cost: ₹8,00,000). Payment routed through broker. **TDS:** Broker deducts 1% TDS (₹10,000) and deposits it under the agreement between Exchange and broker. **Income Tax:** ₹60,000 (Profit: ₹2,00,000 × 30%). **Amount Transferred:** ₹9,90,000.	**Transaction:** Seller sells 5 ETH (FMVF ₹10,00,000; acquisition cost: ₹9,00,000). Buyer pays ₹7,00,000 in cash and ₹3,00,000 worth in goods. **TDS:** Buyer deducts 1% on cash (₹7,000), and Seller pays 1% on goods (₹3,000), deposits and intimate the buyer. **Income Tax:** ₹30,000 (Profit: ₹1,00,000 × 30%). **Amount Transferred:** ₹6,93,000 + ₹3,00,000 worth of goods.	**Exchange-Based:** Obligation exists. **P2P:** TDS obligation exists for "specified persons" paying the seller, as the quantum is in excess of Rs 50,000.

3	**VDA owned by exchange itself** and sold to a buyer.	**Transaction:** Exchange sells 3 BTC (FMV: ₹60,00,000; acquisition cost: ₹50,00,000) **TDS:** Buyer deducts 1% TDS (₹60,000) or exchange handles the payment through agreement. **Income Tax:** ₹3,00,000 (Profit: ₹10,00,000 × 30%). **Amount Transferred:** ₹59,40,000.	Not Applicable.	**Exchange-Based:** Obligation exists regardless of buyer's classification.
4	**Exchange of one VDA for another** (e.g., BTC for ETH), with each party responsible for TDS on FMV of the VDA they transfer.	**Transaction:** Party A transfers 1 BTC (FMV: ₹30,00,000; acquisition cost: ₹25,00,000) to Party B. Party B transfers 20 ETH (FMV: ₹30,00,000; acquisition cost: ₹26,00,000). **TDS:** Exchange deduct TDS in kind (being 1% of 1 BTC and 1% of 20 ETH), convert them to cash and deposit on behalf of buyer and seller. **Income Tax:** Party A: ₹1,50,000 (Profit: ₹5,00,000 × 30%), Party B: ₹1,20,000 (Profit: ₹4,00,000 × 30%). **Amount Transferred:** No amount of money is exchanged.	**Transaction:** Same as Exchange-Based Scenario. **TDS:** Both deduct 1% TDS (₹30,000 each), deposit it and exchange proof of deposit before transaction completion. **Income Tax:** Same as Exchange-Based Scenario. **Amount Transferred:** Only proof of TDS payment is exchanged before transaction completion.	**Exchange-Based and P2P:** No obligation only if both parties qualify as "specified persons".

INCOME TAX DEPARTMENT

Directorate of Income Tax

(Public Relations, Publications & Publicity) 6th Floor, Mayur Bhawan, Connaught Circus, New Delhi - 110001

January, 2025

(Public Relations, Publications & Publicity)
6th Floor, Mayur Bhawan, Connaught Circus, New Delhi - 110001