

**NEWS FLASH****Withholding tax under Section 194S for transfer of VDA other than via an Exchange**

29 June 2022

The Finance Act, 2022 has inserted Section 194S in the Income-tax Act, 1961 ('the Act') which casts a tax withholding obligation at the rate of 1% with effect from 1 July 2022, on any person paying to a resident any sum by way of consideration for transfer of a Virtual Digital Asset<sup>1</sup> ('VDA'). Tax withholding is applicable if the consideration payable by a specified person<sup>2</sup> as defined, exceeds INR 50,000 per Financial Year ('FY'); in any other case, tax is required to be withheld if the consideration exceeds INR 10,000 per FY. Tax is required to be withheld even in case of a barter transaction for VDA.

The extent and nuances of this provision have been intensely debated. The Central Board of Direct Taxes ('CBDT') had issued a Circular No. 13 of 2022 dated 22 June 2022 ('the Circular') providing guidelines for the removal of difficulties relating to the application of the Section, when the transfer of a VDA takes place on or through the 'Exchange'<sup>3</sup>. Kindly refer to our Newflash<sup>4</sup> dated 24 June 2022 wherein we have summarised the guidelines issued in this circular.

For all other transactions not covered by the earlier circular, CBDT has issued Circular No. 14 of 2022 dated 28 June 2022. The Team at JMP Advisors is pleased to summarise below the key clarifications provided in the Circular.

➤ **Where the consideration for transfer of VDA is not in kind**

- The buyer of a VDA is required to withhold tax as per Section 194S. The buyer is required to furnish relevant quarterly statements reporting such withholding of tax.
- Taxes shall be withheld on the net consideration excluding GST.

➤ **Where the consideration for transfer of VDA is in kind or in exchange for another VDA**

- Section 194S provides that where a VDA is transferred directly between a buyer and a seller for a consideration in kind or for another VDA or partly in kind and cash is not sufficient to meet the withholding tax liability, the buyer is required to ensure that tax required to be withheld has been paid before releasing the consideration for transfer of a VDA.
- To illustrate, where VDA 'A' is being exchanged with VDA 'B', one person is a buyer for 'A' and a seller for 'B' and the other person is a buyer for 'B' and a seller for 'A'. In such a scenario, both the buyer and the seller need to pay tax for their respective transfer of VDAs and show evidence to the other so that VDAs can be exchanged. Both will have to carry out prescribed compliances with respect to the filing of relevant statements.

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<sup>1</sup> VDA has been defined in the section 2(47A) of the Act to mean inter-alia any information or code or number or token generated through cryptographic means or otherwise, by whatever name called, a non-fungible tokens, and any other digital asset as may be notified by the Central Government.

<sup>2</sup> Specified person has been defined in section 194S to mean:

- Individual/Hindu Undivided Family ('HUF') whose total sales or turnover or gross receipts do not exceed INR 10 million in case of business or INR 5 million in case of profession during the immediately preceding FY;
- Individual/HUF not having any income from business or profession

<sup>3</sup> The term Exchange has been defined in the Circular as any person that operates an application or platform for transferring of VDAs, which matches buy and sell trade and executes the same on its application or platform.

<sup>4</sup> <http://www.jmpadvisors.com/wp-content/uploads/JMP-Advisors-News-Flash-Section-194S.pdf>

- Where taxes are withheld under section 194S of the Act, the provisions of section 194Q of the Act would not apply.

**JMP Insights:** *In a situation, where the consideration for transfer of a VDA is in kind or in exchange for another VDA, the Circular does not provide clarity on the valuation of VDA for withholding tax purposes. Further the circular has not clarified on the grossing up of withholding tax required, if any, in the case where transfer of the VDA is in kind or in exchange for another VDA. This can create practical challenges for buyers while carrying out withholding tax compliances.*

Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us at [coe@jmpadvisors.in](mailto:coe@jmpadvisors.in).

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