

Centre to clarify on TDS on benefits, VDA

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The Central Board of Direct Taxes (CBDT) is set to issue guidance notes on two key tax proposals introduced in the union budget for FY23 that expanded the tax deducted at source (TDS) provisions so that businesses have a better understanding of the provisions before they kick in.

There will be two separate guidance notes—one on the TDS provisions on virtual digital assets (VDAs) and the other on the TDS on certain benefits in the nature of sales promotion expenses of businesses covered under the newly introduced section 194R of the Income Tax Act— explained a person familiar with the development.

These guidance notes will be issued before 1 July when the two TDS provisions kick in, said the person, who spoke on the condition of anonymity.

However, there is unlikely to be any relaxation on the scope of what is regarded as virtual digital assets, although industry players are hoping for it. "The law is clear on what is a virtual digital asset," said the person cited above.

The government introduced a new tax regime for virtual digital assets in the Finance Act of 2022 that provided for a 30% tax without any set-off for losses and without deductions other than cost of purchase. The new regime also provided for a TDS of 1% tax on payment for transfer of virtual digital asset to a resident.

This TDS provision is implemented under a new provision added to the Income Tax Act, section 194S. The provision insists that in certain cases, for example where the payment for the transfer of the digital asset is in kind, it has to be ensured that the tax is paid before making such payment in kind.

The CBDT has been scaling up the scope of TDS provisions to collect data on transactions and to ensure that income does not go unreported. Section 194R dealing with the 10% TDS was introduced to cover cases where benefits in excess of ₹20,000 is given to one person in the course of the business.

For example, if a manufacturing company gives benefit to anyone who supports the business such as a dealer, the TDS provision will help the department to capture data on that in addition to nudging the recipient of that benefit to report that income in his tax returns and pay the tax.

Experts said that besides the clarifications on the TDS provisions, relief on the scope of the virtual digital asset tax regime would be immensely helpful to the nascent industry. They say airline miles or credit card points could specifically be excluded from the scope of virtual digital assets.

"Clarifications by the government on the scope of virtual digital assets before the first advance tax instalment due date would be immensely helpful for businesses. There is a case for excluding non-fungible tokens (NFTs) from the scope of virtual digital assets as the tax regime allows its taxation either as business income in the hands of a trader or as capital gain in the hands of an investor," said Sudhir Kapadia, national tax leader, EY. The first advance tax instalment is payable by 15 June.

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An email sent to the finance ministry on Thursday seeking comments for the story remained unanswered at the time of publishing.