



Section 194S-TDS on payment of Virtual Digital Asset (VDA)

Introduction

Finance Act 2022 has inserted a new section 194S in the Income-tax Act 1961, with effect from 1st July 2022.

According to this section, a person who is responsible for paying any purchase consideration to any resident for purchase/transfer of any Virtual Digital Asset (VDA) is liable to deduct TDS at 1% on such sum. The TDS should be deducted at the time of credit or payment whichever is earlier. Virtual Digital Asset (VDA) means any information or code or number, or token, generated through cryptographic means or otherwise. For example, digital art, images, video, bitcoins, etc.,

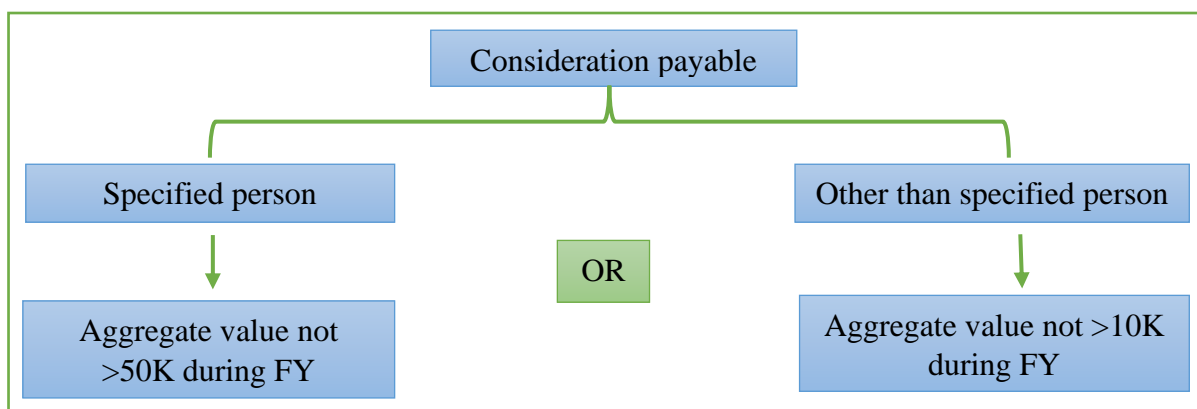
Exemption

This deduction is not required to be made in the following cases:-

(i) If the consideration is payable by a specified person and the value or aggregate value of such consideration does not exceed fifty thousand rupees during the financial year;

or

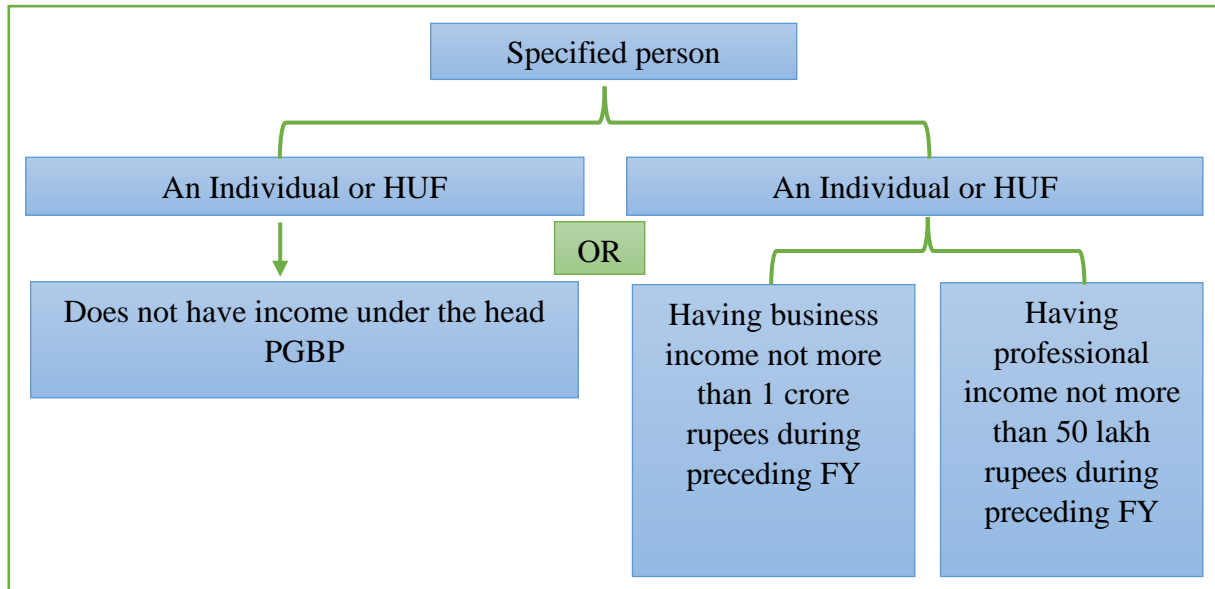
(ii) If the consideration is payable by any person other than a specified person and the value or aggregate value of such consideration does not exceed ten thousand rupees during the financial year.



The following are defined as specified person for the purposes of this provision:

(i) An individual or Hindu undivided family (HUF) who does not have any income under the head “profit and gains of business or profession”; and

(ii) An individual or HUF having income under the head “profits and gains of business or profession”, whose total sales/gross receipts/turnover from business carried on by him does not exceed one crore rupees or in case of profession exercised by him does not exceed fifty lakh rupees. This threshold is to be seen in the financial year immediately preceding the financial year in which the VDA is transferred.



Guidelines for removal of difficulties under sub-section (6) of section 194S of the Income-tax Act, 1961

Sr No	Questions	Answers
1	<p>In case where VDA is transferred through an exchange and is owned by a person other than exchange.</p> <p>For instance, VDA is transferred through XYZ exchange and is owned by Mr A.</p> <p>Case 1- Mr A is seller as well as broker</p> <p>Case 2- Mr A is seller and Mr B is broker</p>	<p>Case 1- Where Mr A is seller as well as broker.</p> <p>(i) TDS u/s 194S may be deducted by XYZ exchange which is crediting or making payment to the seller Mr A.</p> <p>(ii) The brokerage commission which is paid by the XYZ exchange to Mr A is also subject to tax u/s 194S of the Act.</p> <p>Case 2- Where Mr A is seller and Mr B is broker.</p> <p>(i) The responsibility to deduct tax lies on both the XYZ exchange and the broker Mr B.</p> <p>(ii) However, if there is a written agreement between the XYZ exchange and the broker Mr B. Then the broker Mr B shall alone deduct the tax and the quarterly return shall</p>



		be furnished by XYZ exchange on or before the due date prescribed by the Act.
2	<p>In case where VDA is transferred through an exchange and is owned by such exchange.</p> <p>For instance, VDA is transferred through XYZ exchange and is owned by XYZ exchange. Mr B is the broker and Mr C is the buyer.</p>	<p>(i)The buyer Mr C is required to deduct TDS u/s 194S of the Act, or</p> <p>(ii)If there is a written agreement between the buyer Mr C or broker Mr B and the XYZ exchange, then XYZ exchange shall be paying tax and furnishing a quarterly return in Form 26QF on or before the due date prescribed by the Act.</p> <p>(iii)The XYZ exchange is also required to furnish the Income-tax return including all the transactions u/s 194S.</p>
3	In case where the VDA is transferred in kind (other than cash) or in exchange of another VDA.	In this case, the person responsible for paying such consideration is required to ensure that tax required to be deducted has been paid in respect of such consideration, before releasing the consideration.
4	Whether the provision of section 194Q of the Act is also applicable on transfer of VDA apart from section 194S?	It is clarified that once tax is deducted u/s 194S of the Act, then tax is not required to be deducted u/s 194Q of the Act.
5	Whether the consideration of VDA shall be on Gross basis after including GST/commission or it shall be on “net basis” after exclusion of these items.	It is clarified that the TDS u/s 194S of the Act shall be on the “net” consideration after excluding GST/charges levied by the deductor for rendering service.
6	In transactions where payment is being carried out through payment gateways like cashfree, paypal, etc., there may be tax deduction twice.	In order to remove this difficulty, it is provided that the payment gateway will not be required to deduct TDS u/s 194S of the Act on a transaction, if the TDS has been deducted by the person required to make deduction u/s 194S of the Act.
7	Section 194S shall come into effect from the 1st July 2022. The liability to deduct tax u/s 194S of the Act applies only when the value or aggregate value of the consideration for transfer of VDA exceeds fifty thousand rupees during the financial year in case of consideration being paid by specified person and ten thousand rupees in other cases. It is not clear how this limit of fifty thousand (or ten thousand) is to be computed?	<p>Since the threshold of fifty thousand rupees (or ten thousand rupees) is with respect to the financial year, calculation of consideration for transfer of VDA triggering deduction u/s 194S of the Act shall be counted from 1st April, 2022.</p> <p>However, if the consideration for transfer of VDA, has been credited or paid before 1st July 2022, the consideration would not be subjected to TDS u/s 194S of the Act.</p>