

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF ECONOMIC AFFAIRS  
RAJYA SABHA UNSTARRED QUESTION NO. 692  
TO BE ANSWERED ON 13.12.2022

**Foreign Crypto exchanges**

692 **Shri Vivek K. Tankha:**

Will the Minister of *Finance* be pleased to state:

- (a) whether Government is aware of foreign Crypto exchanges operating in the country without any legal registration, if so, Government's policy position on the issue;
- (b) whether foreign Crypto exchanges are complying with Indian laws including the 1 per cent TDS mandate, if not, how Government plans to check this;
- (c) whether Government is aware of the estimated loss caused due to migration of Crypto investors to offshore exchanges post 1 per cent TDS mandate since July 2022; and
- (d) if so, the details of remedial steps being taken by Government?

ANSWER

MINISTER OF STATE IN THE MINISTRY OF FINANCE  
(SHRI PANKAJ CHAUDHARY)

(a) to (d): Currently, crypto assets are unregulated in India. Crypto assets are by definition borderless and require international collaboration to prevent regulatory arbitrage. Government does not register foreign crypto exchanges. Regarding 1 per cent TDS mandate, the CBDT administers direct tax laws like the Income Tax Act, 1961, Prohibition of Benami Property Transactions Act, 1988, Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 etc. Under the Income-tax Act, 1961 (hereinafter referred to as the 'Act'), section 194S has been inserted through the Finance Act, 2022 for deduction of tax at source in respect of transfer of Virtual Digital Assets (VDAs) which is to be complied with by any person engaged in transactions related to VDAs.

The section 194S inserted by Finance Act, 2022, w.e.f. 01.07.2022, is as under:

**Payment on transfer of virtual digital asset.**

**194S.** (1) Any person responsible for paying to any resident any sum by way of consideration for transfer of a virtual digital asset, shall, at the time of credit of such sum to the account of the resident or at the time of payment of such sum by any mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income-tax thereon:

**Provided** that in a case where the consideration for transfer of virtual digital asset is—

(a) wholly in kind or in exchange of another virtual digital asset, where there is no part in cash; or

(b) partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such transfer,

the person responsible for paying such consideration shall, before releasing the consideration, ensure that tax required to be deducted has been paid in respect of such consideration for the transfer of virtual digital asset.

(2) The provisions of sections 203A and 206AB shall not apply to a specified person.

(3) Notwithstanding anything contained in sub-section (1), no tax shall be deducted in a case, where—

(a) 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

(b) 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.

(4) Notwithstanding anything contained in section 194-O, in case of a transaction to which the provisions of the said section are also applicable along with the provisions of this section, then, tax shall be deducted under sub-section (1).

(5) Where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense Account" or by any other name, in the books of account of the person liable to pay such sum, such credit of the sum shall be deemed to be the credit of such sum to the account of the payee and the provisions of this section shall apply accordingly.

(6) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the prior approval of the Central Government, issue guidelines for the purposes of removing the difficulty.

(7) Every guideline issued by the Board under sub-section (6) shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person responsible for paying the consideration on transfer of such virtual digital asset.

Explanation—For the purposes of this section "specified person" means a person—

(a) being an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business carried on by him or profession exercised by him does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred;

(b) being an individual or a Hindu undivided family, not having any income under the head "Profits and gains of business or profession".]

Under sub-section (6) of section 194S of the Act, the CBDT has been empowered to issue guidelines, with the approval of the Central Government to remove any difficulty arising in giving effect to the provisions of TDS section relating to VDA. CBDT has issued guidelines

for removal of difficulties under sub-section (6) of section 194S of the Act in Circular No. 13 of 2022 dated 22<sup>nd</sup> June 2022 which may apply in cases where transfer of VDA is taking place on or through an Exchange. Through Circular No. 14 of 2022 dated 28<sup>th</sup> June 2022, order u/s 119 of the Act in relation to TDS under section 194S of the Act for transactions other than those taking place on or through any Exchange has been issued.

Post insertion of Section 194S in the Income-tax Act, 1961 through Finance Act, 2022, a total of 318 direct tax challans having TDS code 194S have been received having total amount of Rs. 60.46 crores. CBDT conducts outreach/ awareness programs for deductors/taxpayers and also takes appropriate action as required under the provisions of the Income-tax Act, 1961 including search & seizure operations, surveys, enquiries etc.

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