



Union Budget

February 2024

Wishlist



Reduce Tax Deducted at Source (TDS) rate on Virtual Digital Assets (VDAs)

What

Section 194S of the Income Tax Act, 1961 (“the Act”) provides for withholding of tax at the rate of 1% from the payment of consideration on the transfer / sale of VDAs. It is requested to reduce TDS rate from 1% to 0.01%

Why

The introduction of 1% TDS by inserting Section 194S to the Act via Budget 2022 is a welcome step as it aids the tracking of VDA transactions. However, due to the high rate of TDS, it has created unintended consequences for both users and the wider industry. Several studies point to massive shift in VDA transactions from KYC-enabled and PMLA-compliant Indian VDA platforms to foreign platforms/gray market resulting in not just the revenue loss but also putting Indian users at risk.

We understand the purpose of introduction of TDS is to establish a trail of VDA transactions, and the same can be achieved by a lower TDS rate since all TDS information is captured in Form 26AS/ Annual Information Statement of the deductees/ users. Further, it is easier for the Government to collect the balance taxes from the taxpayers at the time of filing the income tax return by way of advance tax and self-assessment tax.

The Ministry of Finance, via notification dated 7 March 2023 under the Prevention of Money Laundering Act, has granted Reporting Entity status to VDA service providers. CoinSwitch has registered with the Financial Intelligence Unit (FIU-IND) as part of our commitment to transparency and compliance. Hence, the Government’s original intent of tracking VDA transactions are also being met via VDA service providers falling under the Prevention of Money Laundering Act and Rules.

Lowering TDS rate of 1% to 0.01% will allow the Government to continue having an oversight of VDA transactions through Form 26AS and/or the Annual Information Statement of users and PMLA-compliant VDA service providers. Hence, the

Government may consider reducing the TDS rate under Section 194S of the Act from 1% to 0.01%. This will be an incentive to Indian users to trade on compliant platforms thereby significantly enhancing Government's tax revenue.

Allow setting off and carry forward of VDA losses

What

As per the provision of Section 115 BBH(2)(a) and Section 115 BBH(2)(b) of the Act, the loss from transfer of one VDA cannot be set off with income from another VDA. Further, such loss shall not be allowed to be carried forward to next assessment year/s.

VDAs should be treated as any other capital asset and, hence, set off or carry forward of losses arising from transfer of VDAs should be allowed as per the prevailing income-tax law.

Why

Several other countries have allowed setting off and carrying forward of loss from sale of VDAs.

In the US, for instance, any loss from sales of crypto assets can be used to offset income tax up to \$3,000 in total. In India, too, such provisions are available to other sectors. We, therefore, request Indian users be allowed to set off and carry forward any loss incurred from transfer of VDAs.

Section 74 of the Act provides for setting off and carrying forward of loss incurred under the head 'Capital Gains' for a period of eight assessment years. Also, loss from speculation business is allowed not only to be set off but also to be carried forward for a period of four assessment years.

Similar provisions must be enacted for VDAs by allowing the setting off loss from one VDA with the income from another VDA. Also, the provision should be enabled for the benefit of carry forward of loss to next assessment year/s.

We believe these enabling provisions will cement India's position as a hub of Web3 activity, contributing to the growth of our digital economy and promote safe innovation.

Reduce 30% flat tax on VDA gains

What

Section 115 BBH (1) of the Act prescribes a 30% tax on any income from transfer/sale of VDAs. VDAs should be treated on par with other capital assets.

Why

The current construct of Section 115 BBH is neither investor friendly nor conducive to the growth of the burgeoning Web3 sector in India. While the importance of revenue for the Government is acknowledged, the suggested alternate tax treatment will go a long way in furthering the Government's objective while supporting this sunrise sector in India.

Unlike the flat rate of 30% on VDAs, the tax rate is different for short term capital gains and long term capital gains earned from other capital assets.

For instance, in the case of a resident individual, the short term capital gains rate is 15% if securities transaction tax is paid on sale of equity shares/ units of equity oriented funds or at normal slab rates on sale of any other asset.

For long term capital gains, the tax rate is 10% on sale of equity shares / units of equity oriented funds in excess of INR 1,00,000 and security transaction tax is paid. Further on sale of any other assets, tax shall be chargeable at the rate of 10% without cost inflation adjustment or 20% with cost inflation adjustment. Similar tax provision must be enabled for taxing income earned from VDAs.

The high rate of tax on VDA gains may not be optimal to maximize the tax revenues from the industry as it indirectly prompts users to evade tax through peer-to-peer transactions and trading in gray market or non-compliant exchanges.

Reduce TDS rate in case of inoperative of Permanent Account Number (PAN) for VDAs

What

Section 206AA of the Act prescribes a 20% TDS if the payee fails to provide a Permanent Account Number (PAN).

However, the first and second proviso to Section 206AA(1) of Act specifies a rate of 5% instead of 20%, in case deduction is made under Section 194O and 194Q. We request for addition of a third proviso by providing a lesser rate for Section 194S in case of non-submission of PAN or an inoperative PAN (where PAN is not linked with Aadhaar) for VDA sector.

Why

Currently, the deduction of TDS in case of non-furnishing or inoperative PAN by a payee under Section 194S is 20%. However, under Section 194O (payment by e-commerce operator to e-commerce participant) and 194Q (purchase of goods) of the Act, a lower rate of TDS of 5% has been allowed.

With growing participation of retail investors in digital assets, a reduced TDS rate where PAN is not available or inoperative, will help them with better working capital. Since this benefit has already been extended to e-commerce and purchases, a similar benefit may be extended to the growing VDA sector in India.

Allow Assessing Officer to issue certificate for deduction at lower or Nil rate on VDAs

What

Currently, Section 197 of the Act does not permit the Assessing Officer to issue a lower / NIL deduction certificate for withholding under section 194S of the Act. It may be clarified that an Assessing Officer shall have the power to issue lower withholding certificate for payments envisaged under section 194S of the Act, if the recipient justifies the deduction of income-tax at any lower rates or no deduction of income-tax, as the case may be. Consequently, rules in relation to lower or Nil withholding application may need to be modified/relaxed.

Why

The VDA retail investors are steadily growing in India with several of them engaging in high-frequency trading. They operate at wafer thin margins and therefore, execute high volumes of trades to earn a decent margin (very similar to day traders in the stock markets).

The high rate of 1% TDS (withholding tax) on every sale will make trading infeasible for investors, affecting their working capital and overall margins. Further, taxpayers may have situations wherein they may have losses which otherwise do not justify tax withholding at the rate of 1%

Necessary amendments should be made to Section 197 to include 194S so as to empower the assessing officer to issue the certificate for deduction of TDS at lower/NIL rate on VDA transactions.

Increase TDS threshold limit on VDAs

What

Section 194S of the Act provides for 1% TDS on the transfer / sale of VDAs, exceeding INR 10,000 / INR 50,000 (in case peer to peer transactions) in a financial year.

It is requested to increase the TDS threshold limit from INR 10,000/INR 50,000 to INR 5,00,000.

Why

As illustrated above the rate of TDS in VDA transactions is very high but the threshold limit is very low. Instead of INR 10,000 / INR 50,000, it is submitted to increase the threshold limit to INR 5,00,000 for retail investors.

A high number of VDA retail investors are in the lower tax brackets. Thus, increasing the threshold from INR 10,000 / INR 50,000 will reduce administrative burden on the Income Tax Department while processing refunds. This move will also promote ease of doing business for the VDA sector in India.

Benefit of basic exemption limit should be provided for VDA income

What

Individuals (under 60 years) are not required to pay any income tax if the total income is below the threshold limit of INR 250,000 in a financial year. However, the basic exemption limit for filing tax returns is not applicable for VDA income.

It is requested that payment of tax under section 115BBH of the Act (income from VDA) shall be made applicable after adjusting VDA income with the basic exemption limit of INR 2,50,000. Additionally, the basic exemption limit for filing of tax return as specified under section 139(1) shall also be applicable to individuals with VDA income.

Why

The Finance Act for the relevant assessment year lays down a basic exemption limit for 'total income' of an assessee below which no tax is payable by the assessee on his total income. Similarly, section 139(1) relaxes the provision of mandatory filing of tax return for such assessee whose total income does not exceed the maximum amount not chargeable to tax.

A resident individual can take the benefit of adjusting the special rate income such as short term capital gains under Section 111A and long term capital gain under Section 112 and Section 112A against the basic exemption limit to reduce taxes.

In other words, if taxable income is less than the basic exemption limit, the special rate income can be adjusted against the shortfall in the basic exemption limit and pay tax on the remaining income only.

Similar tax provisions must be enabled for the taxation of income from VDAs to simplify the tax structure.

Announce robust regulatory framework for Virtual Digital Assets (VDAs)

What

India's G20 Presidency has been able to push toward clearer policies on crypto assets by bringing consensus on the need to broaden the scope of ongoing work on crypto assets. The G20 Finance Ministers and Central Bank Governors (FMCBG) have also adopted the detailed and action-oriented G20 policy roadmap on crypto assets. Several G20 nations and jurisdictions have taken an early and decisive lead on regulating crypto assets.

Recognising the growing momentum for crypto assets in India and building on its leadership position in the G20, we urge the Government to announce a robust regulatory framework for VDAs in the upcoming Budget 2024.

Why

Crypto assets or VDAs have been around for more than a decade. Efforts to regulate them have gained momentum in recent years with 83% of the G20 and major financial hubs having either passed national crypto legislation or in the process of it, according to an analysis. During India's G20 Presidency, the IMF and FSB in a joint paper noted that blanket bans that make all crypto asset activities (e.g., trading and mining) illegal can be costly and technically demanding to enforce. It could push trading in VDAs and other similar activities into the 'gray zone' and potentially expose India as a preferred destination for fraudsters and unscrupulous actors who prefer geographies with weak or no regulation to carry on their activities.

India leads the world in grassroots adoption as measured by the Chainalysis Global Crypto Adoption Index 2023. India is also the second-largest crypto market in the world by raw estimated transaction volume, beating out several wealthier nations.

The Indian Web3 sector, which counts more than 900 startups, could potentially

contribute \$1.1 trillion to the country's economy over the next 10 years by 2032, according to a report by Bharat Web3 Association.

Given the momentum that is building for regulated and responsible use of digital assets, we urge the Government to announce a robust regulatory framework for VDAs in the upcoming Budget 2024 followed by wide consultation with all stakeholders on the principles of regulations. A clear-cut regulatory framework for digital assets that fosters innovation and protects users will cement India's place as a Web3 hub.

Allow Central KYC Access to VDA Service Providers

What

The Ministry of Finance ('MoF'), by way of a Notification dated March 7, 2023, notified that certain VDA activities when carried out for or on behalf of another natural or legal person in the course of business will be included in the category of 'designated business or profession'. As a result, all persons carrying out the above activities have been brought under the ambit of 'reporting entity' for the purpose of the Prevention of Money Laundering Act, 2022 ('PMLA'). Subsequently, CoinSwitch was amongst the first to register with the FIU-IND as a reporting entity.

To enhance compliance, FIU-IND registered VDA service providers must be granted access to the Central KYC registry to conduct the necessary KYC related compliances and fulfill their obligations under the PMLA.

Why

The Central Government vide notification F.No. P-12011/12/2022-ES Cell-DOR dated March 07, 2023, has notified the following activities, when carried out for or on behalf of another natural or legal person in the course of business as an activity for the purposes of sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003): (i) exchange between virtual digital assets and fiat currencies; (ii) exchange between one or more forms of virtual digital assets; (iii) transfer of virtual digital assets; (iv) safekeeping or administration of virtual digital assets or instruments enabling control over virtual digital assets; and (v) participation in and provision of financial services related to an issuer's offer and sale of a virtual digital asset.

Subsequently, corresponding amendments were also made to the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 and separate AML/CFT guidelines issued for VDA service providers.

Besides registering themselves with the FIU-IND, specifically VDA service

providers are required to undertake KYC verifications and report user data to the Central Registry of Securitisation, Asset Reconstruction and Security Interest of India (CERSAI). However, FIU-IND registered VDA service providers are currently unable to comply with the requirement of accessing Central KYC Registry maintained by CERSAI.

Central KYC application can be accessed by authorized institutions or other notified institutions under the Prevention of Money Laundering Act or rules framed by the Government of India or any Regulator (RBI, SEBI, IRDA, and PFRDA) there under.

It is requested to grant VDA Service Providers access to C-KYC Registry to enable them to comply with PMLA/Rules/Guidelines.

