



CHANGES IN NEW TDS RATES , INCOME TAX PROVISIONS RELATED TO ONLINE GAMING -BUDGET 2023

Dear Friends,

As you are aware that the pandemic has changed user patterns and increased usage of mobile phones and other electronic devices. When it comes to online gaming, industry leaders have their eyes set on the Indian market which is highly attractive considering the volume and growth potential. We have witnessed surge of various online gaming platforms after COVID-19 Pandemic. Since during lockdown when all world has closed inside doors , the use of electronic gadgets have increased manifold for educational and entertainment purposes. Some online games are free and some involves pooling of entry fees to large extent from the gamers.

Considering the large volume of revenue being generated from winnings of online games, the rise in users of such games, variety of playing options and payment options, it was expected that the government may provide clarifications on applicability of TDS and taxation of winnings from online games

As per reports, India is poised to have 1 billion smartphone users by 2026, and will be the second-largest smartphone manufacturer in the next five years.

Also, India is one of the world's largest mobile gaming markets in terms of app downloads and the revenue from online gaming is expected to reach \$1.9 bn by 2024.

A large number of individuals participate in fantasy leagues, card games, online challenges etc., which involve actual money. The withholding tax on such winnings has been so far governed by section 194B of the Income tax Act ("the Act") which provided for withholding tax on winnings from lottery or crossword puzzles, including card games and other game of any sort.

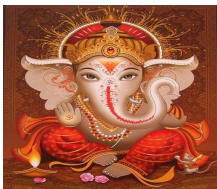
TDS was only applicable in cases where the winnings exceeded Rs 10,000. Also, the taxation of such winnings in the hands of individual players were governed by section 115BB of the Act which provided a tax rate of 30 per cent.

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APPLICABLE PROVISIONS:

PROVISIONS OF SECTION 194B OF THE INCOME TAX ACT

As per Section 194B, a person responsible for paying winnings of lotteries, crossword puzzles and other similar games must deduct income tax before making the payment. This is applicable only when the winnings exceed Rs. 10,000.

Currently, a flat TDS (Tax Deducted at Source) of 30% is applicable on winnings over this limit. The total income tax charged becomes 31.2% after factoring in surcharge and cess.

The company or organization distributing prize money is responsible for deducting TDS.

There can be cases where the winnings are fully in kind or partly in kind and cash. If the cash balance is not sufficient to deduct TDS, the payer is responsible for withholding winnings till the payee pays him the equivalent amount in cash. Alternatively, the payee can pay applicable TDS and submit proof of payment to the payer.

WHO DEDUCTS TDS UNDER SECTION 194B OF THE INCOME TAX ACT?

The person paying the prize money to a person winning by means of a lottery, crossword puzzle, game shows, dance competitions, etc. is eligible to deduct TDS if the amount exceeds Rs. 10,000.

APPLICABILITY OF SECTION 194B OF THE INCOME TAX ACT

Persons paying winnings of lotteries, TV shows, and online games must collect the TDS amount at the time of payment and deposit it to the government. Given is a list of sources for which a flat tax rate of 31.2% is applicable:

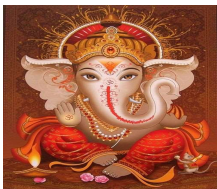
- Lottery (online and offline)
- Crossword puzzles
- Race betting

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- Card games
- Gambling (online and offline)
- TV shows, including game shows, quiz shows, singing competitions etc.
- Fantasy sports

If you have received a gift in kind, such as a flat or a car, you have to pay a 31.2% TDS before taking possession of the gift. However, in some cases, a company distributing such gifts may choose to take the TDS liability.

HOW TO CALCULATE TDS DEDUCTION UNDER SECTION 194B?

Income from game shows and lotteries is counted separately from the rest of your income for taxation purposes. Winnings from such sources fall under the head 'Income from other sources.'

Let's say Mr. Yadav, has won Rs. 4,00,000 from a game show. His taxable income from salary is Rs. 7,00,000 after factoring in all tax deductions. TDS on his winnings will be Rs. 1,24,800 (31.2% of Rs. 4,00,000) while tax liability on the rest of his earnings will be as per the applicable tax slab rates.

PENALTY FOR NOT PAYING TDS UNDER SECTION 194B

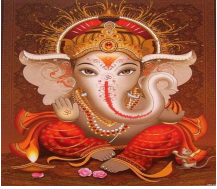
If a person fails to make TDS payments under Section 194B he/she is punishable with imprisonment which will be a minimum of 3 months and can extend up to seven years along with fine.

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However, there were various open questions relating to withholding tax on online game winnings such as:

- (i) Interpretation of the term “game” (e.g. each match or tournament or aggregate of games in a financial year);
- (ii) Interpretation of the term “payment” - as to whether constructive payments would be covered (e.g., credit to wallets);
- (iii) Whether TDS under section 194B is applicable on gross winnings or net winnings. As there was no specific clarification, different positions were adopted by entities in the industry.

Considering the large volume of revenue being generated from winnings of online games, the rise in users of such games, variety of playing options and payment options, it was expected that the government may provide clarifications on applicability of TDS and taxation of winnings from online games.

In line with the expectation, Finance Bill 2023 has proposed a separate tax code applicable to online gaming. The Finance Bill 2023 has inserted provisions of withholding tax (section 194BA) and income tax on winnings from online games (section 115BBJ).

THE UNION BUDGET 2023-24 - IT IS PROPOSED TO:-

- (i) amend Section 194B and 194BB of the Act to provide that deduction of tax under these sections shall be on the amount or aggregate of the amounts exceeding ten thousand rupees during the financial year;
- (ii) amend section 194B of the Act to include “gambling or betting of any form or nature whatsoever” within its scope;
- (iii) amend section 194B of the Act to exclude online games from the purview of the said section from the 1st day of July, 2023, since a new section 194BA is proposed to be introduced for deduction of tax at source on winnings from online games from that date;

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(iv) insert a new section 194BA in the Act, with effect from 1st July 2023, to provide for deduction of tax at source on net winnings in the user account at the end of the financial year.

(v) In case there is withdrawal from user account during the financial year, the income-tax shall be deducted at the time of such withdrawal on net winnings comprised in such withdrawal. In addition, income-tax shall also be deducted on the remaining amount of net winnings in the user account at the end of the financial year. Net winnings shall be computed in the prescribed manner.

(vi) to provide in the proposed section 194BA that in a case where the net winnings are wholly in kind or 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 the net winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the net winnings;

(vii) to provide that if any difficulty arises in giving effect to the provisions of new section 194BA, the Board may, with the prior approval of the Central Government, issue guidelines for the purpose of removing the difficulty. Every such guideline issued by the Board shall be laid before each House of Parliament, and shall be binding on the income tax authorities and on the person responsible for deduction of income-tax on any income by way of winnings from online game;

(viii) to provide the definition of “computer resource”, “internet”, “online game”, “online gaming intermediary”, “user”, “user account” in the proposed section 194BA;

(ix) to amend section 115BB of the Act to exclude income from winnings from online games from the purview of the said section from the assessment year 2024-25, since it is proposed to introduce section 115BBJ to tax winnings from online games from that assessment year;

(x) to insert a new section 115BBJ in the Act with regard to tax on winnings from online games to provide that where the total income of an assessee includes any income by way of winnings from any online game, the income-tax payable shall be the aggregate of-

- the amount of income-tax calculated on net winnings from such online games during the previous year, computed in the prescribed manner, at the rate of thirty per cent; and

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• the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the net winnings referred to above;

(ix) to provide the definition of “computer resource”, “internet”, “online game” in the proposed section 115BBJ.

PLEASE NOTE THAT

a). The amendments proposed for section 194B and section 194BB of the Act will take effect from 1st April, 2023.

b). The proposed section 194BA of the Act will take effect from 1st July 2023.

c). The amendment proposed for section 115BB of the Act and the proposed section 115BBJ in the Act will take effect from 1st April, 2024 and will accordingly be applicable for the assessment year 2024-25 and subsequent assessment years.

A SNAPSHOT OF THE KEY DIFFERENCES IN THE PROPOSED AMENDMENT VIS-À-VIS THE CURRENT PROVISIONS ARE AS FOLLOWS:

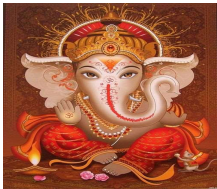
Sr.No	Particulars	Current Provisions	Proposed Provisions
1.	Relevant provisions	TDS – 194B Taxation of winnings – 115BB	TDS – 194BA Taxation of winnings – 115BBJ
2.	Effective dates	TDS – Up to 30 June 2023 Taxation of winnings – Up to – 31 March 2023	TDS – From 1 July 2023 Taxation of winnings – from 1 April 2023
3.	Minimum threshold for TDS	Winnings exceeding RS 10,000	No threshold provided
4.	Timing of TDS	Applicable at the time of payment of the winnings	Annually - Withholding tax to be deducted on net winnings in his user account computed in the manner as may be prescribed at the end of the financial year. For withdrawals during the year – TDS to be deducted at the time of such

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			<i>withdrawal on the net winnings comprised in such withdrawal, as well as on the remaining amount of net winnings in the user account, computed in the manner as may be prescribed, at the end of the financial year.</i>
5.	<i>Rate of TDS</i>	<i>Rates in force - 30 per cent*</i>	<i>Rates in force - 30 per cent*</i>
6.	<i>Winning in kind</i>	<i>The person responsible for paying the winnings, before releasing the winnings to ensure that tax has been paid in respect of the winnings.</i>	<i>The online gaming platform before releasing the winnings to ensure that tax has been paid in respect of the net winnings.</i>
7.	<i>Rate of income tax on such winnings</i>	<i>30 per cent*</i>	<i>30 per cent*</i>
8.	<i>Quantum of income to be taxed</i>	<i>There was no specific guidance on taxation of gross winnings vis-à-vis net winnings</i>	<i>Both TDS and income tax to be computed on the net winnings. The calculation mechanism for the net winnings would be prescribed (would be separately notified).</i>

** Plus, applicable surcharge and cess.*

CONCLUSION: *Based on the above, it can be observed that the proposed provisions of section 194BA is applicable on all net winnings from online gaming without any thresholds and the timing for the applicability of withholding tax is also clarified. The proposed amendment is a welcome move by the government providing clarity on the taxation of online gaming.*

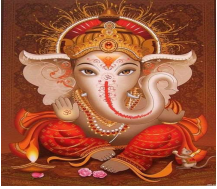
Online gaming platforms would have to factor the above amendment while distributing winnings to the users. Further, one would have to wait for the computation mechanism to be prescribed for computing the 'net winnings.'

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SOURCE:

1. <https://news.caclubindia.com/budget-2023-2024-tds-and-taxability-on-net-winnings-from-online-games-22011.asp>
2. <https://www.businesstoday.in/opinion/columns/story/online-gamers-should-watch-out-for-new-tds-income-tax-provisions-on-winnings-369473-2023-02-08>

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