Circular No. 5 of 2023

F. No. 370142/12/2023-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)
*****

New Delhi, dated 22nd May, 2023

Subject: Guidelines for removal of difficulties under sub-section (3) of section 194BA of the Income-tax Act, 1961

Finance Act 2023 inserted a new section 194BA in the Income-tax Act, 1961 (hereinafter referred to as "the Act") with effect from 1st April 2023.

The new section mandates a person, who is responsible for paying to any person any income by way of winnings from any online game during the financial year to deduct income-tax on the net winnings in the person's user account. Tax is required to be deducted at the time of withdrawal as well as at the end of the financial year. Net winning is required to be computed in the manner as may be prescribed. The manner of computation of net winning has now been prescribed in Rule 133 of the Income-tax Rules 1962, vide notification no. 28/2023 dated 22nd May 2023.

Sub-section (3) of section 194BA of the Act authorises Central Board of Direct Taxes (CBDT) to issue guidelines, for the purposes of removal of difficulties with the previous approval of the Central Government.

These guidelines are required to be laid before each House of Parliament and are binding on the income-tax authorities and the person liable to deduct income-tax.

Accordingly, in exercise of the power conferred by sub-section (3) of section 194BA of the Act, CBDT hereby issues the following guidelines.

Guidelines

Question 1) There are multiple wallets under one user. How "net winnings" is to be computed with respect to multiple wallets of one user

Answer: It has been clarified in the Rule 133 that user account shall include every account of user, by whatever name called, which is registered with online gaming intermediary and where any taxable deposit, non-taxable deposit or the winning of the user is credited and withdrawal by the user is debited. Thus each wallet which qualifies as user account shall be considered as user account for the purposes of computing net winnings.

It has further been clarified in the Rule 133 that whenever there are multiple user accounts of the same user, each user account shall be considered for the purposes of calculating net winnings. The deposit, withdrawal or balance in the user account shall mean aggregate of deposits, withdrawals or balances in all user accounts.

For illustration, a user has multiple user accounts under one deductor (one TAN). For the purposes of calculating tax required to be deducted under section 194BA of the Act, each of these user accounts is to be considered. Deposit in any of these user accounts would be considered as deposit (non-taxable or taxable as per the definition in Rule 133) and withdrawal from any user accounts would be considered as withdrawal.

Let us suppose that there is first withdrawal from any of these user accounts. Net winnings for the purposes of calculating tax required to be deducted under section 194BA shall be calculated as under

Net winnings =A-(B+C), where

A = Amount withdrawn from the user account;

B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the financial year, till the time of such withdrawal; and

C = Opening balance of the user account at the beginning of the financial year.

Here for the purposes of calculating amount B, the non-taxable deposits in all of the user accounts under that deductor (one TAN) is to be aggregated. Same would apply for calculating all other amount for calculation under Rule 133.

However, if the one deductor (one TAN) is having multiple platforms and it is not technologically feasible for him to integrate multiple user accounts across platforms then he may, at his option, calculate tax required to be deducted for the purposes of section 194BA of the Act for each platform separately. But even in that case all the user accounts under one user in one platform need to be considered for the purposes of calculating net winnings in the formulas provided in Rule 133.

It may also be noted that Rule 133 has also clarified that transfer from one user account to another user account, maintained with the same online gaming intermediary, of the same user shall not be considered as withdrawal or deposit, as the case may be. However, if the deductor is deducting tax under section 194BA of the Act for each platform separately, as discussed in the immediately preceding paragraph, transfer from one user account to another user account under same online gaming intermediary across platforms shall be considered as withdrawal or deposit for the purposes of calculation of net winnings under Rule 133.

Question 2) If a user borrows some money and deposits in his user account, will it be considered taxable deposit or non-taxable deposit?

Answer: For non-taxable deposit it is necessary that the amount deposited by the user is not taxable i.e. it is from already taxed income or it is not chargeable to tax. In a case where user borrows the money and deposit in his user account, it shall be considered as non-taxable deposit.

Question 3) How will bonus, referral bonus, incentives etc. be treated?

Answer: Bonus, referral bonus, incentives etc are given by the online game intermediary to the user. They are to be considered as taxable deposit under Rule 133. The taxable deposit will increase the balance in user account and is not allowed to be deducted in calculation of net winnings as only non-taxable deposits are allowed to be deducted. Thus any deposit in the form of bonus, referral bonus, incentives etc would form part of net winnings and tax under section 194BA of the Act is liable to be deducted at the time of withdrawal as well as at the end of the financial year.

Some deposit could be money equivalent too like coins, coupons, vouchers, counters etc. In such a situation the equivalence in money of such deposit shall be considered as taxable deposit and would accordingly form part of balance in user account.

However, it is seen that there is some incentives/bonus which is credited in user account only for the purposes of playing and they cannot be withdrawn or used for any other purposes. Rule 133 has provided that such deposit shall be ignored for calculation of net winnings. Thus they shall not be included in non-taxable deposit and they shall also not be included in opening balance or closing balance of user account. Thus, to the extent they will not be part of net winnings. However, person liable to deduct tax under section 194BA of the Act must keep separate accounts of such deposits.

Further, if and when these incentive / bonus are recharacterised and they are allowed to be withdrawn, they would be treated as taxable deposit at the time when they are recharacterised. Thus, they will become part of net winnings in the year of recharacterisation.

Question 4) At what point we consider that amount has been withdrawn?

Answer: As stated earlier, it has also been clarified in the Rule 133 that transfer from one user account to another user account, maintained with the same online gaming intermediary, of the same user shall not be considered as withdrawal or deposit, as the case may be. However, when the amount is withdrawn from the user account to any other account, it shall be considered as withdrawal. With respect to deductor, any account of user which is not registered with the online game intermediary (for which he is a deductor) is an account which is not a user account and any transfer from user account to such account is a withdrawal.

When in consideration of amount in user account, some coupons etc are issued for purchase of goods or services, or some item in kind is issued, that will also be considered as withdrawal. It is the duty of the person who is required to deduct tax at source under section 194BA of the Act to ensure that the tax, as required to be deducted, is deducted at source under section 194BA, before issuing such coupons or items in kind.

The clarification provided in answer to Question no 1 is also needed to be kept in mind. It has been clarified that if the deductor is deducting tax under section 194BA

of the Act for each platform separately, transfer from one user account to another user account under same online gaming intermediary across platform shall be considered as withdrawal or deposit for the purposes of calculation of net winnings under Rule 133.

Question no 5) There are a large number of gamers who play with very insignificant amount and withdraw also very small amount. Deducting tax at source under section 194BA of the Act for each insignificant withdrawal would increase compliance for tax deductor. Can there be relaxation to ease compliance?

Answer: In order to remove difficulty in deducting tax at source under section 194BA of the Act for insignificant withdrawal, it is clarified that tax may not be deducted on withdrawal on satisfaction of all of the following conditions, namely:-

(i) net winnings comprised in the amount withdrawn does not exceed Rs 100 in a month;

(ii)tax not deducted on account of this concession is deducted at a time when the net winnings comprised in withdrawal exceeds Rs 100 in the same month or subsequent month or if there is no such withdrawal, at the end of the financial year; and

(iii) the deductor undertakes responsibility of paying the difference if the balance in the user account at the time of tax deduction under section 194BA of the Act is not sufficient to discharge the tax deduction liability calculated in accordance with Rule 133.

Question 6) When the net winnings is in kind how will tax deduction under section 194BA operate?

Answer: At the outset, it may be clarified that where money in user account is used to buy an item in kind and given to user then it is net winnings in cash only and the deductor is required to deduct tax at source under section 194BA of the Act accordingly.

However, there could be a situation where the winning of the game is a prize in kind. In that situation provision of sub-section (2) of section 194BA of the Act will operate. According to this 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. In these situations, the person responsible for paying, shall, before releasing the winnings, ensure that tax has been paid in respect of the net winnings. In the above situation, the deductor will release the net winnings in kind after the deductee provides proof of payment of such tax (e.g. Challan details etc.). This year Form 26Q also has included provisions for reporting such transactions under section 194BA of the Act (vide Notification no. 28/2023 dated 22nd May 2023).

In the alternative, as an option to remove difficulty if any, the deductor may deduct the tax under section 194BA of the Act and pay to the Government. In the Form 26Q

the deductor will need to show this as tax deducted by him on net winning under section 194BA of the Act.

Question 7) How will the valuation of winnings in kind required to be carried out?

Answer: The valuation would be based on fair market value of the winnings in kind except in following cases:-

(i) The online game intermediary has purchased the winnings before providing it to the user. In that case the purchase price shall be the value for winnings.

(ii) The online game intermediary manufactures such items given as winnings. In that case, the price that it charges to its customers for such items shall be the value for such winnings.

It is further clarified that GST will not be included for the purposes of valuation of winnings for TDS under section 194BA of the Act.

Question 8) These guidelines have been issued after 1.4.2023 while the law has come into effect from 1.4.2023. Will there be any relaxation on penal consequences in the intervening period i.e. between 1.4.2023 and the date on which the Rules / guidelines are issued?

Answer: Taxpayers were expected to deduct tax at source under section 194BA even before issuance of the Rule 133 or this guidance. It is expected that they have carried out that responsibility. However, if there is a shortfall in deduction of tax due to time lag in issuance of Rule 133 or this Circular, for the month of April, 2023 that shortfall may be deposited with the tax deduction for the month of May 2023 by 7th June 2023. In that case there will not be any penal consequences.

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22.5.2023

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