

Tax on Winnings From Online Games

Present Position

At present, income by way of winnings from any lottery or crossword puzzle or card game and “other games of any sort” are subjected to income tax @ 30% under Section 115BB of the Income-tax Act, 1961 (“the Act”), and tax deduction at source (“TDS”) under Section 194B of the Act at the rate of 30%, if the amount exceeds INR 10,000.

Budget Proposal

As one of the measures for “rationalization and simplification”, the Hon’ble Finance Minister in the Union Budget 2023 has announced the proposal on “removing the minimum threshold of ` 10,000/- for TDS and clarifying taxability relating to online gaming”.

The Finance Bill, 2023 seeks to insert a new section 115BBJ in the Act relating to tax on winnings from online games. The proposed section seeks to levy income tax on “net winnings from online games”, computed in the manner as may be provided by rules, at the rate of 30%. The term “online game” has been defined as “a game that is offered on the internet and is accessible by a user through a computer resource including any telecommunication device”. The terms “internet” and “computer resource” have also been separately defined.

This amendment, once approved, will be applicable from Financial Year 2023-24 onwards.

Further, Section 194BA is proposed to be introduced with effect from 1st July, 2023 to stipulate that ‘any person’ responsible for paying to ‘any person’ any income by way of winnings from any online game during the financial year shall deduct income-tax at 30% on the net winnings in his “user account”, computed in the manner as may be prescribed, at the end of the financial year. This TDS will apply without any threshold. The term, “user account” is defined as “account of a user registered with an online gaming intermediary”. The terms “user” and “online gaming intermediary” are also defined.

In a case where there is a 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, as well as on the remaining amount of net winnings in the user account, computed in the manner as may be provided by rules, at the end of the financial year.

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.

ELP’s Insights

- The manner of computation of “net winnings” is yet to be prescribed. It remains to be seen how Gross Gaming Revenue (GGR) and/ or Contest Entry Amount (CEA), other fees and losses are adjusted while computing “net winnings”. This may also require appropriate modifications in the ERP systems as well as terms and conditions of the online gaming platforms as regards withdrawal of winnings by the user.
- The proposed Section 194BA requires ‘any person’ to deduct tax when paying to ‘any person’ any income by way of winnings from online games. Thus, seemingly, TDS obligation will get triggered even in cases where payment is made by an Indian online gaming platform to a person resident outside India, as well as in case of a non-resident online gaming platform paying a resident in India. Clarity on this aspect is desirable.
- In case of winnings in kind, one hopes that clarification is issued as regards valuation and modality of payment of TDS (as has been done in case of Virtual Digital Assets).