

Tax Flash News

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CBDT issues rules and guidelines on the taxability of winnings from online games and its TDS implications

In recent times, there has been a rise in the users of online games and hence there was a need to bring in specific provisions for the taxability of winnings from online games and tax deduction at source (TDS) on such winnings due to its different nature, variety of playing options and payment options. Accordingly, the Finance Act, 2023 introduced Section 115BBJ to tax winnings from online games. Further, Section 194BA was introduced to provide for tax deduction at source on net winnings from any online game in the user account. If there is a withdrawal from a user account during the financial year, tax is to be deducted at the time of such withdrawal. The tax shall also be deducted on the remaining net winnings in the user account at the end of the financial year.

Recently, the Central Board of Direct Taxes (CBDT) has issued a Notification¹ introducing a new rule (Rule 133) prescribing the manner and the procedure for the computation of net winnings for taxability under Section 115BBJ and for tax deduction under Section 194BA. CBDT has also issued a Circular² comprising guidelines for the removal of difficulties while implementing TDS provisions.

Rules prescribing the manner of computation of net winning (Rule 133)

<p>Net winnings from online games for Section 115BBJ are to be calculated using the following formula:</p> <p>Net winnings = (A+D) - (B+C)</p>	<ul style="list-style-type: none"> • A = Aggregate amount withdrawn from the user account during the Financial Year (FY) • B = Aggregate amount of non-taxable deposit made in the user account by the owner during the FY • C = Opening balance of the user account at the beginning of the FY • D= Closing balance of the user account at the end of the FY
<p>Net winnings comprised in the first withdrawal during the FY, for tax deduction under Section 194BA, are to be calculated using the following formula:</p> <p>Net winnings =A - (B+C)</p>	<ul style="list-style-type: none"> • A = Amount withdrawn from the user account • B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the FY till the time of such withdrawal • C = Opening balance of the user account at the beginning of the FY <p>Net winnings shall be zero if the sum of amounts B and C is equal to or greater than the amount A.</p>
<p>Net winnings comprised in each subsequent withdrawal during the FY, for tax deduction under Section 194BA, are to be calculated using the following formula:</p> <p>Net winnings =A - (B+C+E)</p>	<ul style="list-style-type: none"> • A = Aggregate amount withdrawn from the user account during FY till the time of subsequent withdrawal, including the amount of such subsequent withdrawal • B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the FY till the time of such subsequent withdrawal • C = Opening balance of the user account at the beginning of the FY

¹ Notification No. 281/2023 dated 22 May 2023

² CBDT Circular No. 5/2023, dated 22 May 2023

	<ul style="list-style-type: none"> E= Net winnings comprised in the earlier withdrawal or withdrawals, if tax has been deducted as per Section 194BA on such winnings <p>Net winnings will be zero if the sum of amounts B, C and E is equal to or greater than the amount A.</p>
<p>Net winnings comprised in the user account at the end of the FY, for tax deduction under Section 194BA, are to be calculated using the following formula:</p> <p>Net winnings = (A+D) - (B+C+E)</p>	<ul style="list-style-type: none"> A = Aggregate amount withdrawn from the user account during the financial year B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the financial year C = Opening balance of the user account at the beginning of the FY D = Closing balance of the user account at the end of the FY E= Net winnings comprised in the earlier withdrawal or withdrawals during the FY if tax has been deducted as per Section 194BA on such winnings <p>Net winnings will be zero if the sum of amounts B, C and E is equal to or greater than the sum of amounts A and D.</p>
Relevant terms for this Rule	<ul style="list-style-type: none"> 'Non-taxable deposit' means the amount deposited by the user in his user account and which is not taxable. 'Taxable deposit' means any amount deposited in the user account which is not a non-taxable deposit and includes any amount paid directly to the user not through the user account. 'Withdrawal' means any amount withdrawn by the user from any user account.
Rule 133 provides that:	
<ul style="list-style-type: none"> User account shall include every registered account of the user, by whatever name called, and where any taxable deposit, non-taxable deposit or the winnings made by the user is credited and withdrawal by the user is debited Whenever there is payment to the user in kind or in cash, or partly in kind and partly in cash, which is not from the user account, the provisions of Rule 133 shall apply to calculate net winnings by deeming that the money equivalent to such payment has been deposited as taxable deposit in the user account and the equivalent amount has been withdrawn from the user account at the same time and shall accordingly be included in amount A. Whenever there are multiple user accounts of the same user, each user account shall be considered for calculating net winnings and the deposit, withdrawal or balance in the user account shall mean the aggregate of deposit, withdrawal or balance in all user accounts. Whenever there are multiple user accounts of the same user, 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 for tax deduction under Section 194BA. Whenever there is a taxable deposit in the form of a bonus, referral bonus, incentives, promotional money or discount which can only be used for playing the online games and not for withdrawal or any other purposes, then it shall be ignored for calculation of net winnings and shall not be included in amount B or amount C or amount D. Whenever any bonus, referral bonus, incentives, promotional money or discount is not considered as part of amount B or amount C or amount D due to its non-withdrawable nature but subsequently recharacterised and allowed to be withdrawn, then the same shall be deemed as taxable deposit at the time of recharacterisation and it shall be deemed that the equivalent amount has been deposited in the user account at that time. <p>The rules modified various forms. The rules have come into force from date of their publication in the Official Gazette i.e. from 22 May 2023.</p>	

CBDT Guidelines

Sr No.	Question	Answer
1	<p>There are multiple wallets under one user. How 'net winnings' is to be computed with respect to multiple wallets of one user</p>	<p>User account shall include every account of the 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 that qualifies as a user account shall be considered as user account to compute net winnings.</p> <p>Whenever there are multiple user accounts of the same user, each user account shall be considered for calculating net winnings. The deposit, withdrawal or balance in the user account shall mean the aggregate of deposits, withdrawals or balances in all user accounts.</p> <p>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 TDS under Section 194BA for each platform separately. But even in that case, all the user accounts under one user in one platform need to be considered for calculating net winnings in the formulas provided in Rule 133.</p> <p>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. However, if the deductor is deducting tax under Section 194BA for each platform separately, transfer from one user account to another user account under the same online gaming intermediary across platforms shall be considered as withdrawal or deposit for the calculation of net winnings under Rule 133.</p>
2	<p>If a user borrows some money and deposits in his user account, will it be considered as a taxable deposit or a non-taxable deposit?</p>	<p>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 the user borrows the money and deposits in his user account, it shall be considered as a non-taxable deposit.</p>
3	<p>How will bonus, referral bonus, incentives, etc. be treated?</p>	<p>Bonus, referral bonus, incentives, etc., 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 a bonus, referral bonus, incentives, etc., would form part of net winnings and tax is liable to be deducted at the time of withdrawal as well as at the end of the financial year.</p> <p>Some deposits 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 the balance in the user account.</p> <p>There are some incentives/bonuses which may get credited in a 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 deposits shall be ignored for the calculation of net winnings. They shall not be included in the non-taxable deposit, and they shall also not be included in the opening balance or closing balance of the user account. Thus, to the extent, they will not be part of net winnings. However, the person liable to deduct tax under Section 194BA must keep separate accounts of such deposits.</p> <p>Further, if and when these incentives/bonuses are recharacterised and are allowed to be withdrawn, they would be treated as taxable deposits at the time when they are recharacterised. Thus, they will become part of net winnings in the year of the recharacterisation.</p>

4	At what point we consider that amount has been withdrawn?	<p>Transfer from one account to another user account maintained with the same online gaming intermediary of the same user shall not be considered as withdrawal or deposit. However, when the amount is withdrawn from the user account to any other account, it shall be considered as withdrawal. With respect to the deductor, any account of a 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 a user account to such account is a withdrawal.</p> <p>When in consideration of the amount in a user account, some coupons etc., are issued for the 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 to ensure that the tax, as required to be deducted, is deducted at source, before issuing such coupons or items in kind.</p> <p>If the deductor is deducting tax under Section 194BA for each platform separately, transfer from one user account to another user account under the same online gaming intermediary across platforms shall be considered as withdrawal or deposit for the purposes of calculation of net winnings under Rule 133.</p>
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 for each insignificant withdrawal would increase compliance for tax deductor. Can there be relaxation to ease compliance?	<p>Tax may not be deducted on withdrawal on the satisfaction of all of the following conditions:</p> <ul style="list-style-type: none"> • Net winnings comprised in the amount withdrawn does not exceed INR 100 in a month • Tax not deducted on account of this concession is deducted at a time when the net winnings comprised in withdrawal exceeds INR 100 in the same month or subsequent month or if there is no such withdrawal, at the end of the financial year; and • The deductor undertakes the responsibility of paying the difference if the balance in the user account at the time of tax deduction under Section 194BA is not sufficient to discharge the tax deduction liability calculated in accordance with Rule 133.
6	When the net winnings are in kind how will tax deduction under Section 194BA operate?	<p>Where money in the user account is used to buy an item in kind and given to the user then it is net winnings in cash only and the deductor is required to deduct tax at source accordingly.</p> <p>However, there could be a situation where the winning of the game is a prize in kind. In that situation, provisions of Section 194BA(2) will operate. This will cover situations 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 the 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. The deductor will release the net winnings in kind after the deductee provides proof of payment of such tax (Challan details, etc.). This year Form 26Q also has included provisions for reporting such transactions under Section 194BA.</p> <p>Alternatively, the deductor may deduct the tax under Section 194BA and pay it to the Government. In Form 26Q, the deductor will need to show this as tax deducted by him on net winning under Section 194BA.</p>
7	How will the valuation of winnings in kind required to be carried out?	<p>The valuation would be based on the fair market value (FMV) of the winnings in kind, except in the following cases:</p> <ul style="list-style-type: none"> • 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. • 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 valuation of winnings for TDS.
8	These guidelines have been issued after 1 April 2023, while the law has come into effect from 1 April 2023. Will there be any relaxation on penal consequences in the intervening period i.e., between 1 April 2023 and the date on which the Rules/guidelines are issued?	It was expected to deduct tax at source under Section 194BA even before the issuance of Rule 133 or this guidance. It is expected that deductor has carried out that responsibility. However, if there is a shortfall in the deduction of tax due to a time lag in the issuance of Rule 133 or the Circular for the month of April 2023 that shortfall may be deposited with the tax deduction for the month of May 2023 by 7 June 2023. In that case, there will not be any penal consequences.

Our comments

After the introduction of provisions dealing with taxability of winnings from online games, the industry and various stakeholders were expecting clarity on various aspects for complying with such provisions. The rules and guidelines will provide clarity on several aspects like computation of 'net winnings' with respect to multiple wallets of one user, treatment of bonus, referral bonus, incentives, valuation of winnings in kind, etc. The rules prescribe formulas to compute net winnings for taxability under Section 115BBJ and for tax deduction under Section 194BA, which will help to determine correct tax liability.

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