

Tax Insights

31 May 2023

Guidelines and notification to withhold tax on 'net winnings' from online games – CBDT

In brief

The Finance Act, 2023 inserted section 194BA in the Income-tax Act, 1961 (the Act) with effect from 1 April 2023. This provision stipulates an obligation on any person responsible for paying to any other person any income by way of winnings from any online game during the financial year (FY) to deduct tax on the net winnings in the person's user account. According to section 194BA of the Act, tax is required to be deducted at the time of withdrawal and at the end of the FY. Taxpayers were awaiting clarifications on the mechanism to compute the amount of 'net winnings'. The Central Board of Direct Taxes (CBDT) has now issued guidelines¹ (Guidelines), exercising the powers given in the section.

The CBDT has also issued a notification² to insert a new rule 133 in the Income-tax Rules, 1962 (Rules) to describe the specific mechanism of computation of 'net winnings' in various stages along with certain explanations.

In detail

The below table enumerates the mechanism of computing net winnings, treatment of net winnings in kind, and so on according to the Guidelines and rule 133 of the Rules.

Sl. No.	Issues	Guidelines/Rule
1.	How to compute 'net winnings' in case of the following: (1) First withdrawal during the FY	As per rule 133 of the Rules, 'net winnings' are computed as follows: Net winnings = A-(B+C), where – A = Amount withdrawn from the user account; B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the FY till the time of

¹ Circular No. 5 of 2023 dated 22 May 2023

² Notification No. 28/2023 dated 22 May 2023

Sl. No.	Issues	Guidelines/Rule
	<p>(2) Each subsequent withdrawal during the FY</p> <p>(3) Net winnings comprised in the user account at the end of the FY</p>	<p>such withdrawal; and</p> <p>C = Opening balance of the user account at the beginning of the FY.</p> <p>Net winnings = A-(B+C+E), where –</p> <p>A = Aggregate amount withdrawn from the user account during the FY till the time of subsequent withdrawal, including the amount of such subsequent withdrawal;</p> <p>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;</p> <p>C = Opening balance of the user account at the beginning of the FY; and</p> <p>E = Net winnings comprised in the earlier withdrawal or withdrawals computed under sub-point (1), or under this sub-point, during the FY till the time of subsequent withdrawal if tax has been deducted in accordance with the provision of section 194BA of the Act on winnings comprised in such withdrawal or withdrawals.</p> <p>Net winnings = (A+D)-(B+C+E), where –</p> <p>A = Aggregate amount withdrawn from the user account during the FY;</p> <p>B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the FY;</p> <p>C = Opening balance of the user account at the beginning of the FY;</p> <p>D = Closing balance of the user account at the end of the FY; and</p> <p>E = Net winnings comprised in the earlier withdrawal or withdrawals computed under sub-points (1) or (2) during the FY if tax has been deducted in accordance with the provisions of section 194BA of the Act on winnings comprised in such withdrawal(s).</p> <p>The net winnings in all the above three formulae would be zero if the sum of amounts of B and C or B, C and E, as the case may be, is equal to or greater than A or the sum of A and D, as the case may be.</p>
2.	If there are multiple wallets of one user	The user account will include all the accounts of the user which are registered with the Online Gaming Intermediary (OGI). The deposit, withdrawal or balance in the user account would be the aggregate of deposits, withdrawals or balances in all the user accounts of the same person.

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3.	If the deductor has multiple platforms	<p>If it is not technologically feasible for a deductor to integrate multiple user accounts across platforms, then he or she may calculate and deduct the tax for each platform separately.</p> <p>In the above case, transfer from one user account to another user account under the same OGI across platforms will be considered as withdrawal or deposit for the purposes of calculation of net winnings.</p>
4.	If the user account contains borrowed money	Borrowed deposit in the user account will be considered as non-taxable deposit.
5.	Treatment of bonus, referral bonus, incentive etc.?	<p>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 FY.</p> <p>If coins, coupons, vouchers, counters etc. are given to the user, then monetary value of such rewards will be considered as a taxable deposit and would accordingly form part of the balance in the user account.</p> <p>If some incentives or bonus are credited in the user account only for the purposes of playing and they cannot be withdrawn or used for any other purposes, then such deposit will be ignored for the calculation of net winnings. Subsequently, if they are recharacterised and allowed to be withdrawn, they will be deemed as taxable deposit at the time of such recharacterisation, and it will be deemed that an equivalent amount has been deposited in the user account at that time.</p>
6.	Timing of withdrawal from the user account	<p>Transfer from one user account to another user account, maintained with the same OGI of the same user, will not be considered as withdrawal or deposit, as the case may be.</p> <p>However, when the amount is withdrawn from the user account to any other account, it will be considered as withdrawal.</p> <p>For any account of the user which is not registered with the OGI, then any transfer from the user account to such account would be considered as a withdrawal.</p>
7.	Relaxation of compliance burden in case of insignificant withdrawal	<p>It is clarified that tax would not be deducted on withdrawal upon satisfying all the following conditions:</p> <p>(i) Net winnings comprised in the amount withdrawn does not exceed INR100 in a month;</p> <p>(ii) Tax not deducted on account of this relaxation is deducted at a time when the net winnings comprised in withdrawal exceed INR100 in the same month or subsequent month or, if there is no such withdrawal, at the end of the FY; and</p> <p>(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</p>

Sl. No.	Issues	Guidelines/Rule
		tax deduction liability calculated in accordance with rule 133 of the Rules.
8.	Tax treatment when net winning is in kind	<p>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, the person responsible for paying will, before releasing the winnings, ensure that tax has been paid in respect of the net winnings.</p> <p>Form 26Q also has included provisions for reporting such transactions under section 194BA of the Act. Alternatively, the deductor may deduct the tax under section 194BA of the Act and pay the government.</p>
9.	Valuation of winning in kind	<p>Normally, valuation would be based on the fair market value of the winnings in kind, except in the following cases:</p> <p>(i) If the OGI has purchased the winnings before providing them to the user, then the purchase price will be the value of the winnings.</p> <p>(ii) If the OGI manufactures the items which are given as winnings, then the price charged by the OGI from its customers for such items will be the value of such winnings.</p> <p>GST will not be included for the purposes of valuation of winnings for tax deducted at source under section 194BA of the Act.</p>
10.	Penal consequences during intervening period	In a situation where there is a shortfall in the deduction of tax for April 2023 due to a time lag in the issuance of the Guidelines ¹ , then such shortfall may be deposited with the tax deduction for May 2023 which is due by 7 June 2023. In that case, there will not be any penal consequences.

The takeaways

These Guidelines and rule 133 of the Rules issued by the CBDT will help to mitigate the litigation which may arise on incorrect computation of 'net winnings' in the absence of a prescribed mechanism. Now, taxpayers are expected to deduct the tax on net winnings according to the prescribed formula. Moreover, the CBDT has issued the Guidelines considering the need to increase ease of compliance and reduce undue hardship to the taxpayer.

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