

Online gaming: CBDT issues guidelines for TDS and notifies manner of computing 'net winnings'

25 May 2023



Summary

The Finance Act 2023 inserted specific provisions to tax income from online gaming vide Section 115BBJ¹ of the Act, 1961 (the Act). Section 194BA of the Act was also introduced to provide for levy of TDS², specifically on winnings from online gaming.

The Central Board of Direct Taxes (CBDT) has now issued detailed guidelines³ to provide clarity *inter-alia* on the following aspects:

- Manner of computation of 'net winnings' if a single user has multiple wallets.
- Treatment of bonus, referral bonus, incentives, etc.
- Point at which the amount is considered as withdrawn.
- Compliance in case of insignificant withdrawals.
- Tax deduction if net winnings are in kind.
- Valuation of net winnings in kind.
- Applicability of these guidelines during the interim period (1 April 2023 till 22 May 2023) and relaxation of penal provisions during this period.

Further, CBDT has also notified⁴ Rule 133 of the Income-tax Rules, 1962 (the Rules), to prescribe the computation mechanism for 'net winnings' from online gaming.

Background

The Finance Act, 2023, inserted specific provisions vide Section 115BBJ of the Act to tax income from online gaming. Further, Section 194BA of the Act⁵ was also introduced to codify TDS provisions for net winnings from online gaming. TDS compliances are required to be carried out at the time of withdrawal as well as at the end of the financial year (FY).

The CBDT has now notified Rule 133 of the Rules⁴ to provide the manner of computing 'net winnings'. It has also provided certain guidelines³ to provide clarity in respect of compliance with provisions of Section 194BA of the Act.

Guidelines issued by CBDT

Sr. No.	Particulars	Guidelines provided
1	Manner of computing 'net winnings' in case of multiple wallets of one user.	<ul style="list-style-type: none">• As per Rule 133 of the Rules, for the purpose of computing net winnings, every wallet which qualifies as a user account (UA)⁶ will be

¹ With effect from 1 April 2023

² Tax deducted at source

³ Vide Circular No.5 of 2023 dated 22 May 2023

⁴ Vide Notification No. 28 of 2023 dated 22 May 2023

⁵ With effect from 1 April 2023

⁶ As per Explanation 2(a) of Rule 133 of the Rules, 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.

		<p>considered. Aggregate amounts for all the UAs of a person need to be factored in.⁷</p> <ul style="list-style-type: none"> • If a deductor has multiple platforms and it is not feasible for it to integrate multiple UAs across platforms, then tax can be calculated for each platform separately. <ul style="list-style-type: none"> - However, for calculating net winnings, aggregation needs to be done for all the UAs on a particular platform. • Transfer from one UA to another UA of a user with the same online gaming intermediary (OGI) will not be considered as withdrawal or deposit⁸. <ul style="list-style-type: none"> - However, if the OGI is deducting tax separately for each platform, such transfers across platforms will be regarded as withdrawals or deposits.
2	Whether borrowings for deposit in UA will be considered taxable deposit ⁹ or non-taxable deposit ¹⁰ .	<ul style="list-style-type: none"> • Such deposit shall be considered as a non-taxable deposit.
3	Treatment of bonus, referral bonus, incentives, etc.	<ul style="list-style-type: none"> • Such amounts would be regarded as 'taxable deposits' and form part of 'net winnings' for TDS purposes. • Incentives / bonus which cannot be withdrawn or used for any other purposes, other than for playing games, will not form part of net winnings¹¹. Accordingly, these will not be included in non-taxable deposits, opening balance or closing balance of the UA¹². • When the incentive / bonus is allowed to be withdrawn, it would be treated as a taxable deposit and form part of net winnings in the year of recharacterisation¹³.

⁷ Explanation 2(c) of Rule 133 of the Rules

⁸ Explanation 2(d) of Rule 133 of the Rules

⁹ As per Explanation 1(b) of Rule 133 of the Rules, 'taxable deposit' means any amount deposited in the UA which is not a non-taxable deposit and includes any amount paid directly to the user not through the UA

¹⁰ As per Explanation 1(a) of Rule 133 of the Rules, "non-taxable deposit" means the amount deposited by the user in his UA and which is not taxable

¹¹ Person liable to deduct tax must keep separate accounts of such deposits.

¹² Explanation 2(e) of Rule 133 of the Rules

¹³ Explanation 2(f) of Rule 133 of the Rules

4	What is regarded as withdrawal	<ul style="list-style-type: none"> • For transfer from one UA to another UA with the same OGI, refer to the clarifications provided in point no. 1 above. • If an amount is withdrawn from the UA to any other account, it will be considered a withdrawal. • Any transfer from the UA (registered with the deductor) to any unregistered account (i.e., an account which is not registered with the deductor) will be considered a withdrawal for TDS purposes. • If a coupon for purchasing goods or services or any item in kind is issued as a consideration for the amount in UA, such coupon / item will be considered as withdrawal. Further, tax must be deducted before issuing such coupons / items.
5	Relaxation in TDS compliance in respect of gamers who play with very insignificant amounts and withdraw a very small amount.	<ul style="list-style-type: none"> • Tax will not be deducted on an insignificant withdrawal if all of the following conditions are satisfied: <ul style="list-style-type: none"> - Net winnings (on withdrawal) do not exceed INR 100 in a month; and - Tax is deducted at a time when: <ul style="list-style-type: none"> (i) Net winnings (on withdrawal) exceed INR 100 in the same month or subsequent month; or (ii) If there is no such withdrawal at the end of the FY; and - The deductor undertakes the responsibility to pay the differential amount if the balance in UA is not sufficient to discharge the tax liability.
6	Tax deduction if net winnings are in kind	<ul style="list-style-type: none"> • Where the net winnings are wholly in kind or partly in cash and partly in kind, and the cash component is insufficient to meet the tax liability, the deductor will ensure that tax has been paid for such winnings.

		<ul style="list-style-type: none"> The deductor should release the net winnings in kind after the deductee provides proof of payment of tax¹⁴. Alternatively, the deductor may deduct the tax and pay to the exchequer.
7	Valuation of winnings in kind	<ul style="list-style-type: none"> Valuation of winnings in kind would be based on fair market value, except in the following cases: <ul style="list-style-type: none"> OGI has purchased the winnings: The purchase price will be the value of the winnings. Items given as winnings are manufactured by OGI: The price that is charged to customers will be the value of the winnings. GST will not be included for the purpose of the valuation of winnings.
8	Applicability of these guidelines during the period 1 April 2023 to 22 March 2023 and relaxation of penal consequences for this period.	<ul style="list-style-type: none"> Taxpayers were expected to deduct tax under Section 194BA Act even before issuance of Rule 133 of the Rules and this guidance. If there is a shortfall in tax deduction for April 2023, such shortfall may be deposited by 7 June 2023, along with the TDS for May 2023. In such case, there will be no penal consequences.

Introduction of Rule 133 of the Rules

For the computation of net winnings under Section 115BBJ and 194BA of the Act, Rule 133 of the Rules has been introduced on 22 May 2023.

Sr. No.	Computation of 'net winnings' under provisions of the Act	Computation Mechanism
1	Computation of 'net winnings' under Section 115BBJ of the Act	<p>Net winnings from online games during the previous year will be (A+D) – (B+C), where:</p> <ul style="list-style-type: none"> A = aggregate amount of withdrawals from the UA during the FY;

¹⁴ Such transactions are to be reported in Form 26Q

		<ul style="list-style-type: none"> • B = aggregate amount of non-taxable deposits made in the UA by the assessee during the FY; • C = opening balance in the UA at the beginning of the FY; • D = closing balance in the UA at the end of FY.
2	Computation of 'net winnings' for the purpose of TDS - in case of first withdrawal from UA during the FY	<p>Net winnings = A - (B+C), where:</p> <ul style="list-style-type: none"> • A = amount withdrawn from the UA; • B = aggregate amount of non-taxable deposit made in the UA by the owner during the FY till the time of such withdrawal; and • C = opening balance of the UA at the beginning of the FY. <p>If (B+C) is equal to or greater than A, the net winnings will be regarded as nil.</p>
3	Computation of 'net winnings' for the purpose of TDS - in case of each subsequent withdrawal from the UA during the FY.	<p>Net winnings will be A - (B+C+E), where:</p> <ul style="list-style-type: none"> • A = aggregate amount of withdrawal from the UA till the subsequent withdrawal during FY¹⁵; • B = aggregate amount of non-taxable deposits made in the UA by the owner during FY till subsequent withdrawal; • C = opening balance in the UA at the beginning of the FY; • E = net winnings¹⁶ during FY till the time of subsequent withdrawal on which tax has been withheld under Section 194BA of the Act on the winnings comprised in such withdrawal(s). <p>If (B+C+E) is equal to or greater than A, the net winnings will be regarded as nil.</p>
4	Computation of 'net winnings' for the purpose of TDS – 'net winnings' at the end of the FY	<p>Net winnings will be (A+D) - (B+C+E), where:</p>

¹⁵ including amount of subsequent withdrawal

¹⁶ Comprised in earlier withdrawal / withdrawals computed in Rule 133 (2)/133(4) of the Rules

		<ul style="list-style-type: none"> • A = aggregate amount of withdrawal from the UA during the FY; • B = aggregate amount of non-taxable deposits made in the UA by the owner during the FY; • C = opening balance of the UA at the beginning of FY; • D = closing balance at the end of the FY; • E = net winnings¹⁷ during the FY on which tax has been withheld under Section 194BA of the Act on winnings comprised in such withdrawal(s). <p>If (B+C+E) is equal to or greater than (A+D), the net winnings will be regarded as nil.</p>
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Our comments

The rules and guidelines issued by the CBDT provide much-needed clarity to online gaming companies and will ensure that proper compliance is carried out. These clarifications will also help mitigate litigation on interpretational issues. Companies would now have to factor in the aforesaid guidance even for TDS compliances for the period 1 April 2023 to 22 March 2023. If there is a shortfall in tax deduction for April 2023, such shortfall may be deposited by 7 June 2023, along with the TDS for May 2023, without any penal consequences.

¹⁷ Comprised in earlier withdrawal / withdrawals as computed in Rule 133 (2)/133(4) of the Rules

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