



**'Net-Winnings'**

# WHAT DOES 'NET-WINNINGS' EVEN MEAN?

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The Central Board of Direct Taxes vide notification dated 22nd May 2023, issued guidelines providing clarification in respect of the calculation and the manner for tax deduction pertaining to online gaming ("**Guidelines**"). Additionally, Rule 133 has been introduced as part of the Income Tax (**fifth amendment**) Rules, 2023 ("**Amendment Rules**") which specifically sets out the manner of computation of net winnings for the purposes of TDS.

Previously, the Government of India under the Finance Act 2023, introduced section 194BA for the purposes of applying TDS provisions to online games. As per the provision, any person responsible for paying another person any income by way of winnings is required to deduct income tax on 'net winnings' present in the respective user account. It is important to highlight that the said provision requires the deduction of tax at two points: (a) at the time of withdrawal by a user at any time during the financial year; and (b) at the end of the financial year when there is unwithdrawn amount in the user account.

## Single vs Multiple User Accounts

When section 194BA was introduced, a lot of uncertainty surrounded the interpretation of 'net winnings'. To address the ambiguity arising from section 194BA, Rule 133 and the Guidelines were issued. One such ambiguity under section 194BA was, whether for the purposes of calculating net winnings, a 'user account' would include a single user account on a particular online gaming intermediary platform or it would include all accounts that the user holds on different platforms. The Guidelines have clarified that if there are multiple wallets/ accounts of the same user, then each and every account held by the user with an online gaming intermediary shall be considered in the computation of net winnings. The Guidelines as well as the Amendment Rules provide that the evaluation of the deposit, withdrawal, and balance for computation of net winnings shall be on the *aggregate* of such deposit, withdrawal and balance across all user accounts.

## Minimum Threshold for TDS

Importantly, a threshold of Rs 100 has been applied for the deduction of tax i.e. in the event a user's withdrawal of net winning amounts to less than Rs 100, a tax deduction would not be applicable. However, a caveat placed on this cap is that the tax not deducted on the Rs 100 shall be deducted at a time when the withdrawal of net winnings exceeds Rs 100 either in the same month, subsequent month, or in case no withdrawals are made, at the end of the financial year. For instance, let us say a gamer has net winnings of Rs 50 in the month of September. There can be no TDS owing to the above threshold. However, in the subsequent month of October, he has net winnings of Rs 150. At the end of the financial year, TDS will be collected on the total amount of Rs 200 (150 + 50 from the month of September on which no TDS was collected). A burden of responsibility (to some extent) has been placed on the deductor (i.e. the operator of the online gaming intermediary) to pay the difference if the balance in the user's account/wallet is not sufficient for discharging the TDS liability.

## Gaming Bonus/Incentives

Further, with respect to bonuses, incentives, referral bonuses etc. the Amendment Rules and the Guidelines make it plenty clear that in the event such bonuses, incentives etc. are credited to the user only for playing games on the online gaming platform and are not permitted to be withdrawn from such user account, such deposit to the user account shall not be considered in the computation of net winnings. Such deposit (in the form of bonus, incentives etc.) is also not to be included as part of the opening balance at the beginning of the financial year; closing balance at the end of the financial year; and the aggregate amount of non-taxable deposit.

However, if such deposits are recharacterized in a manner permitting withdrawal, then the deposit of bonus, referral bonus, incentives, discounts etc would amount to a taxable deposit thereby increasing the balance of the user's account. Also, such deposit shall be liable for tax deduction as well for computation of net winnings under rule 133 of the Amendment Rules.

In respect of net winnings being in kind (gadgets or gifts instead of money), the Guidelines provide that the deductor shall release the winnings only if: (a) the person responsible for paying the winnings has paid the relevant tax before releasing the winnings; and (b) a proof of payment (such as challan details; receipt etc) is furnished by the deductee (i.e. the user to whom the winnings are owed) to the deductor of such tax.

## Conclusion

The recent times have seen an evolution in the governance of areas such as online gaming, e-sports, fantasy sports etc. While 'governance' has been an imperative factor in terms of regulation of money (given the enforcement directorate recently carried out a vast search against gaming companies in 25 locations across India for FEMA violations!!) and customer safety, it is possible that the industry experiences a decline in users of such platforms- especially users that were playing "just for fun". Even though, with respect to such users, a threshold of Rs 100 has been placed, it could be argued that the threshold is too low as the amount, in some cases, could equate to the participation fee of tournaments on online gaming platforms.

Further, the heavy onus placed on online gaming intermediaries in respect of TDS and cap of Rs 100, is going to push online gaming intermediaries to align their systems with the provisions for the calculation of net winnings; separation of net winnings in cash from net winnings in kind; and the operation of separate accounts to deal with incentive-based payments to users.

On the bright side, the regulation and the speedy provision of clarification with regards to 'net winnings' under section 194BA of the Income Tax Act, 1961 is welcomed as this development not only offers hope for systematic changes and more regulation in this space but also offers exciting and fascinating opportunities in terms of foreign investment in the Indian online gaming industry.