CHAPTER 12

TAXATION OF DIGITAL TRANSACTIONS



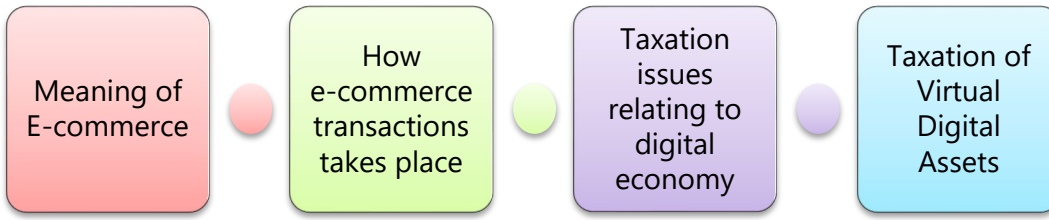
LEARNING OUTCOMES

After studying this chapter, you would be able to -

- **appreciate** the meaning of e-commerce and how business is transacted through E-commerce;
- **identify** the issues and problems in taxing e-commerce transactions;
- **comprehend** the OECD recommendations for taxing e-commerce transactions under Action Plan 1 of Base Erosion and Profit Shifting (BEPS) project;
- **determine** the income arising on transfer of virtual digital asset and taxability thereof;
- **examine** the applicability of the provisions of tax deducted at source on transfer of virtual digital asset by a resident assessee.

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CHAPTER OVERVIEW



12.1 INTRODUCTION

The rapid growth of information and communication technology has resulted in substantial expansion of the supply and procurement of digital goods and services globally, including India. The digital economy is growing at a faster pace than the global economy as a whole.

At present, in the digital domain, business may be conducted without regard to national boundaries and may dissolve the link between an income-producing activity and a specific location. Hence, business in digital domain doesn't actually occur in any physical location but instead takes place in **"cyberspace**." Persons carrying business in digital domain could be located anywhere in the world. Entrepreneurs have adapted swiftly to these developments, leading to the emergence of new business models that rely heavily on digital and telecommunication networks. These models typically -

- do not require physical presence, and
- derive substantial value from data generated, collected, and transmitted through digital platforms

The growth of e-commerce economy has revolutionised the concept of *brick and mortar* to *click and order*. The need for physical presence in a jurisdiction is consequently getting diminished. Therefore, due to transformed business models, communication with suppliers and customers take place virtually and digitally. Emergence of new age technologies such as 3D printing, sharing economy, internet of things etc. has revolutionised new business models in line with the

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digital epoch making it difficult to identify the location of source or origin point of a business transaction.

The expansion of digital business models has given rise to several tax challenges, particularly in relation to:

- **Nexus** (determination of tax jurisdiction),
- **Data** (value creation through user data), and
- **Characterisation** of digital transactions.

To address these challenges, various measures have been introduced over time. This chapter focuses on such developments, **taxation of income arising from transfer of virtual digital assets**, along with the related provisions applicable to a resident assessee.

12.2 WHAT IS E-COMMERCE?

Section 402(12) defines "electronic commerce" to mean the supply of goods or services or both, including digital products over digital or electronic network.

E-commerce or electronic commerce is one of the main components of the Digital Economy. In its widest sense, it encompasses consumer and business transactions conducted over a network, with the help of computers and telecommunications. In other words, e-commerce refers to the exchange of goods or services for value on the internet. E-commerce includes, *inter alia* -

- online purchase and sale of goods and services;
- electronic fund transfers;
- electronic data interchange (EDI); and
- online trading in financial instruments.

OECD Definition of E-commerce -[1]OECD defines e-commerce as the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing orders. Accordingly,

[1] *OECD (2019), Unpacking E-commerce: Business Models, Trends and Policies, OECD Publishing, Paris, https://doi.org/10.1787/23561431-en.*

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whether a commercial transaction qualifies as e-commerce is determined by the ordering method rather than the characteristics of the product purchased, the parties involved, the mode of payment or the delivery channel. The ordering process is considered as a crucial determinant of an e-commerce transaction in the OECD definition.

Key Features of E-commerce

E-commerce has significantly transformed the way business is conducted, with the following key features:

- **Borderless transactions**: Enables trade across jurisdictions without physical presence.
- **Increased consumer convenience**: Facilitates easy access to goods and services.
- **Market expansion**: Allows businesses to reach a wider customer base globally.
- **Platform-based models**: Digital platforms connect multiple buyers and sellers who may be geographically dispersed.
- **Integration with physical infrastructure**: Combines digital ordering with traditional "brick-and-mortar" systems.

Emerging Trends in E-commerce

E-commerce continues to evolve with technological advancements, leading to new business models such as:

- Platform-based marketplaces (intermediary models)
- Subscription-based models, where goods/services are accessed on a recurring basis
- Digitally integrated supply chains and payment systems

These developments have enhanced efficiency but also introduced complexities in taxation, particularly in identifying the place of transaction and value creation.

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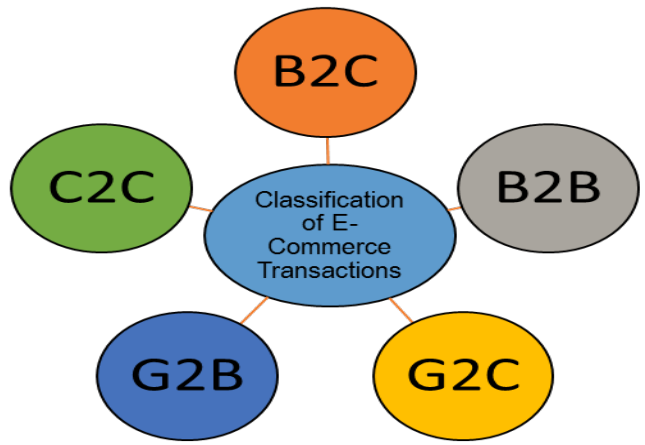
12.3 CONDUCT OF BUSINESS IN DIGITAL ECONOMY

E-commerce is a method of conducting business transactions and not a business transaction by itself. Therefore, the contents of a business transaction done through e-commerce is not different from that of a business transaction carried out through traditional means.

New business models expand the e-commerce frontier in two ways. First, new business models can enable more transactions to move online in a given market or for a given set of participants. Second, new business models can enable whole new markets to emerge for goods and services that previously could not have been bought or sold online, or allow new participants to enter the market**.**

Digital technologies enable e-commerce innovations and often serve as the backbone of business model developments. Some of these technologies, like smart assistants enabled by artificial intelligence (AI), constitute new channels for selling or purchasing products over electronic networks. Similarly, online payment innovations can help to unlock e-commerce potential by promoting trusted online transactions between unknown parties.

Classification of E-commerce based on parties involved in transactions:



(i) **Business to Customers (B2C):** In this type of e-commerce, transactions take place between businesses and consumers. In B2C e-commerce, products or services are sold to end-users (i.e. consumers).

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Amazon.in, Flipkart.com, Myntra.com, bigbasket etc. are the examples of B2C e-commerce businesses, where consumers can find almost anything be it books, electronic products like washing machines, USB storage devices, clothes, shoes or personal care etc.

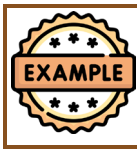
(ii) **Business to Business (B2B):** In B2B e-commerce, transactions take place between two businesses.



IndiaMART, TradeIndia, Alibaba, go4WorldBusiness.com (an online B2B marketplace for global exporters and importers), Amazon, the US-based ecommerce giant etc. are the example of B2B online platforms.

(iii) **Government to Customers (G2C):** The online platform between a government and its citizens or consumers for paying taxes, registering vehicles, and providing information and services such as filing of income-tax return etc.

(iv) **Government to Business (G2B)/ Business to Government (B2G):** In G2B/ B2G e-commerce, an electronic exchange of any information between businesses and the government, usually using internet so the cooperation or communication takes place on the internet. In G2B, government agencies and business use websites, procurement marketplaces, applications, web services.



Government e-Marketplace (GeM), a one stop portal to facilitate online procurement of common use Goods & Services required by various Government Departments/Organizations / PSUs.

INAM-Pro is a web based application, designed by National Highways and Infrastructure Development Corporation Ltd (NHIDCL) and launched by the Ministry as a common platform to bring cement buyers and sellers together.

(v) **Customer to Customer (C2C):** When goods or services are bought and sold between two consumers, C2C e-commerce business takes place.



Olx, a C2C e-commerce online platform where customer sells his used goods to other customer; eBay, an online marketplace in which an individual sells a product or service to another.

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E-Commerce Business Models

With the advancement of digitalization and emergence of new technologies, new forms of e-commerce business models have evolved. Some of such ways of transacting e-commerce business are discussed here below:

Online platform e-commerce business model

In the context of e-commerce, online platforms act as intermediaries between buyers and sellers to facilitate the exchange of goods and services over the Internet. Buyers benefit due to the presence of variety of products available with diverse sellers. Likewise, sellers discover many buyers to whom they can sell their products. As compared to the physical stores, digital marketplace deliver variety of goods and service.

Meaning of Marketplace based model and Inventory based model of e-commerce[2]

Marketplace based model of e-commerce means providing an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.

Inventory based model of e-commerce means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.

Subscription e-commerce business model: Subscription business model is characterised by regular and recurring payments for the repeated provision of a good or a service. The subscription business model can relate to recurring purchases of digital goods and services, or a combination of both digital and tangible products (such as a newspaper subscription that includes access to digital content). Some current e-commerce subscription business models, such as Spotify or Netflix etc.

Digital identity and its potential for e-commerce: Digital identity refers to the set of information used by a computer to authenticate an identity. For example,

[2] *Consolidated FDI Policy Circular of 2017, dated 28.8.2017 read with Press Note dated 26.12.2018.*

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India's Aadhaar programme issues a unique number to every Indian citizen which is a valid means of identification *vis-à-vis* the government as well as private Internet sites including Airbnb, Uber and digital wallet services.

Subscription access to tangible and bundled goods and services: A recent e-commerce trend has been the growth of subscription business models for tangible goods, including in categories like beauty supplies (Birchbox), minerals (Celestial Minerals), groceries (Blue Apron, Hello Fresh), snack foods (Nature Box), cosmetics and self-care products (Dollar Shave Club, Harry's), and many more.

Online-offline e-commerce business models: These business models serve as extensions of e-commerce, pushing the edges of online purchases into physical stores. Some business models combine online ordering with offline distribution, which may be useful to enable the online purchase of products whose quality may not be assessed from a distance, such as perishable goods like groceries. Many businesses have taken advantage of the ubiquity of digital technologies to grow business models based on a combination of both online and offline features. Other online businesses are moving offline by adding brick-and-mortar elements to enable the online sale of other goods, like clothing, where fit may be difficult to assess from a distance.

Emerging Features of Digital Economy

Mobile technologies - Helping e-commerce to flourish in brick-and-mortar stores: Mobile technologies empower consumers to perform a range of digital activities, including online shopping. Consumers use digital technologies throughout the commercial process, but smartphones enable buyers to compare prices, to do research and finally make transactions from any networked location.

Online groceries – e-commerce frontier: Many businesses are successfully selling perishable food and groceries online. Some online business models offer direct shipping of purchased groceries alongside guarantees related to quality and customer satisfaction to give consumers confidence in the purchase of perishable goods and services.

Innovative payment mechanisms: Safely and remotely exchanging money online, including across borders, is fundamental to e-commerce. Safe and effective online payment mechanisms facilitate trusted online transactions,

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boosting the growth of e-commerce between unknown buyers and sellers. Many online payment mechanisms are closely associated with the rise of e-commerce. In fact, one of the earliest online payment models is "Paypal", which is emerged in combination with the pioneering online auction house and e-commerce platform eBay, to enable safe online payments between the parties involved.

Digital wallets: An online payment can be broadly considered to be a "purchase order placed using devices connected to the Internet", a definition that is relevant to many forms of e-commerce. One mechanism of enabling online payments includes the use of digital wallets, also known as "e-wallets" or "electronic wallets".

Digital wallets allow e-commerce by enabling trusted transactions online, without which most e-commerce purchases would not be possible. Consumers may be more willing to do a transaction online using a digital wallet as opposed to directly sharing financial information with online retailers.

Mobile money - Extending e-commerce to the unbanked: Another form of payment innovation that enables e-commerce is the rise of a specific form of mobile payment, also known as "mobile money", particularly for unbanked people (i.e. those without access to financial services). Mobile money differs from digital wallets insofar that the mechanism for payment is conducted via mobile communication networks, and does not necessarily require an existing relationship with a financial services provider.

Mobile money is facilitated by mobile network operators who use a system of agents to accept regular currency in the form of cash and store an equivalent value in a digital wallet, which can then be transferred to other users or can be withdrawn later. Mobile money is connected with a mobile phone number and often uses two-factor authentication through a personal identification number issued at the point of registration. Mobile money can be transferred to others who are also registered with the same mobile money system, exchanged with merchants for goods and services, or can be withdrawn as cash from a mobile money agent. Mobile money can therefore act as a means of storing and transferring value in a secure and convenient way for unbanked people.

Resources: The discussion on E-commerce Business Models in this chapter is essentially based on the text published in "Unpacking E-commerce: Business Models, Trends and Policies, OECD Publishing, Paris" available at https://doi.org/10.1787/23561431-en .

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12.4 TAXATION ISSUES RELATING TO DIGITAL ECONOMY

The emergence of digital business models has given rise to several **complex tax challenges**, primarily due to the absence of physical presence and the borderless nature of transactions.

The key taxation issues relating to the digital economy are as follows:

1. Characterisation of Income and Nexus Issues

There is significant difficulty in:

- determining the nature of payment (e.g., royalty, business income, fees for technical services), and
- establishing a nexus between the taxable transaction and the taxing jurisdiction.

Traditional tax principles rely on physical presence, which is often absent in digital transactions.

2. Identification of Location and Taxpayer

It is difficult to:

- determine the place where the transaction occurs, and
- identify the taxable entity, especially where multiple jurisdictions are involved.

3. Challenge to Permanent Establishment (PE) Concept

Digital businesses challenge the traditional Permanent Establishment (PE) rules, which are based on:

- physical place of business,
- location, and
- permanence.

In a digital environment, businesses can operate without any physical presence, thereby weakening the applicability of existing PE rules.

4. Difficulty in Characterising Digital Services

In many cases, digital services are delivered through automated systems or artificial intelligence, without human intervention.

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This creates ambiguity in classifying such income, particularly as fees for technical services, since traditional definitions assume human involvement.

5. Emergence of "Stateless Income"

Due to the above challenges, income may not be effectively taxed in any jurisdiction, leading to "stateless income", thereby resulting in potential tax avoidance.

12.5 OECD RECOMMENDATIONS UNDER ACTION PLAN 1 OF THE BEPS PROJECT

Due to the tax challenges arising from digitalization, the G20-OECD BEPS Action Plan Committee as part of its 2015 Action 1 Report identified a number of broader tax challenges raised by digitalisation, notably in relation to nexus, data and characterisation.

The Action Report 1 analysed the following three options, namely -

(i) nexus rules in the form of a "**significant economic presence**" test,

(ii) **"withholding tax"** which could be applied to certain types of digital transactions, and

(iii) **"equalisation levy"**, intended to address a disparity in tax treatment between foreign and domestic businesses where the foreign business had a sufficient economic presence in the jurisdiction.

The OECD has **recommended several options** to tackle the direct tax challenges which include:

(1) **Modifying the existing definition of permanent establishment** to provide for whether an enterprise engaged in fully de-materialized digital activities would constitute a PE, if it maintained a significant digital presence in another country's economy.

(2) Introducing the **concept of a virtual fixed place of business** in the concept of permanent establishments i.e., creation of a permanent establishments when the enterprise maintains a website on a server of another enterprise located in a jurisdiction and carries on business through that website.

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(3) Imposition of a final **withholding tax** on gross basis in case of certain payments made for **digital goods or services** provided by a foreign e-commerce provider or imposition of equalisation levy on consideration for certain digital transactions received by a non-resident from a resident or from a non-resident having permanent establishment in other contracting state.

It was concluded that countries could introduce any of these options in their domestic laws as additional safeguards against BEPS, provided they respect existing treaty obligations, or in their bilateral tax treaties. The above options can be resorted to as an interim measure until a clear solution emerges on taxing the digital economy.

Taking into consideration the potential of digital economy and the rapidly evolving nature of business operations, it becomes necessary to address the challenges in terms of taxation of such digital transactions. In order to arrive at a long term solution, in October, 2021 the OECD/G20 inclusive framework agreed for Two-Pillar solution to address the tax challenges arising from the digitalisation of the economy (commonly known as BEPS 2.0).

Note: *Refer Chapter 28 of Module 4 for detailed discussion on Pillar one and Pillar two approaches under BEPS 2.0.*

Indian Perspective – Equalisation Levy

Based on BEPS recommendations:

- The Finance Act, 2016, introduced Equalisation Levy @ 6% on specified digital services provided by non-residents without PE in India.
- The Finance Act, 2020 expanded its scope to e-commerce supply or services.

However -

- Due to concerns regarding ambiguity and compliance burden,
- Equalisation levy on e-commerce supply/services has been withdrawn w.e.f. 1 August 2024, and
- The Finance Act, 2025 has also abolished equalisation levy on specified digital services.

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12.6 TAXATION OF VIRTUAL DIGITAL ASSETS

There has been a phenomenal increase in transactions in virtual digital assets. Further, a market is emerging where payment for the transfer of a virtual digital asset can be made through another such asset. Accordingly, for the taxation of virtual digital assets, a scheme has been introduced by the Finance Act, 2022.

Meaning of virtual digital asset [Section 2(111)]

It means -

(a) any information or code or number or token (not being Indian currency or foreign currency),

- generated through cryptographic means or otherwise, by whatever name called,
- providing a digital representation of value exchanged with or without consideration,
- with the promise or representation of having inherent value, or
- functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and
- can be transferred, stored or traded electronically;

(b) a non-fungible token or any other token of similar nature, by whatever name called;

The non-fungible token means such digital asset as may be notified by the Central Government.

Accordingly, the Central Government has, *vide* Notification no. 75/2022 dated 30.6.2022, specified a token which qualifies to be a virtual digital asset as non-fungible token. However, it shall not include a non-fungible token whose transfer results in transfer of ownership of underlying tangible asset and the transfer of ownership of such underlying tangible asset is legally enforceable.

(c) any other digital asset, as may be notified by the Central Government.

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(d) any crypto-asset being a digital representation of value that relies on a cryptographically secured distributed ledger or a similar technology to validate and secure transactions, whether or not such asset is included in point (a) or (b) or (c) above.

However, the Central Government may, by notification, exclude any digital asset from the definition of virtual digital asset subject to specified conditions.

Accordingly, the Central Government has, *vide* Notification no. 74/2022 dated 30.6.2022, notified that the following virtual digital assets would be excluded from the definition of virtual digital asset–

(i) Gift card or vouchers, being a record that may be used to obtain goods or services or a discount on goods or services;

(ii) Mileage points, reward points or loyalty card, being a record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate or promotional program that may be used or redeemed only to obtain goods or services or a discount on goods or services;

(iii) Subscription to websites or platforms or applications.

Taxability of income from transfer of virtual digital assets [Section 194(1) Table: Sl. No. 4]			
Assessee	**Income**	**Rate of tax**	**Conditions**
Any person.	Any income from the transfer of any virtual digital asset.	30%	(*a*) **No deduction** in respect of any expenditure (other than cost of acquisition, if any) or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act while computing the income from the transfer of any virtual digital asset; and (*b*) **no set off of loss from transfer** of the virtual digital asset computed herein shall be allowed against income computed under any provision of this Act to the assessee and such loss shall not be allowed to be carried forward to succeeding tax years.

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Income from the transfer of any virtual digital asset is taxable @30% under section 194(1) [Table: Sl. No. 4] and no deduction would be allowed under any provisions of the Act in respect of any expenditure or allowance **except cost of acquisition** if any. Further, no set off of any loss is allowed from such income. Moreover, loss from transfer of virtual digital asset can neither be set off against income computed under any provision of this Act nor allowed to be carried forward to succeeding tax years.



Virtual digital asset need not to be a capital asset - *The definition of "transfer" under section 2(109) would apply to any virtual digital asset, whether it is a capital asset or not [Section 194(2)(n)].*

Taxability of receipt of virtual digital asset as gift or for inadequate consideration [Section 92(2)(m)]

Since **virtual digital asset is covered within the definition of "property" under section 92(5)(f)**, any **gift of such virtual digital asset shall be chargeable to tax in the hands of the recipient**, subject to the provisions relating to taxation of gifts

Accordingly, if virtual digital asset is received by any person from any person

(i) **Without consideration:** The aggregate fair market value of such virtual digital asset on the date of receipt would be taxed as the income of the recipient, if it exceeds ₹ 50,000.

(ii) **For inadequate consideration i.e., less than the aggregate fair market value:** If the difference between the aggregate fair market value and such consideration exceeds ₹ 50,000, such difference would be taxed as the income of the recipient.

However, the exclusions from the applicability of section 92(2)(m) will apply to virtual digital asset also. For example, if virtual digital asset is received as a gift by an individual from his relative, the value of the same would not be treated as income.

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TDS on payment on transfer of virtual digital asset [Section 393(1) [Table: Sl. No. 8(vi)]]

Nature of Income or Sum	Payer	Rate	Threshold Limit
Any sum by way of consideration for transfer of a virtual digital asset.	Any person.	1%	Nil

Section 393(1) [Table: Sl. No. 8(vi)] requires any person who is responsible for paying to any resident any sum by way of consideration for transfer of a virtual digital asset to deduct tax @1% of such sum.



The deduction is to be made at the time of credit of consideration to the account of the resident or at the time of payment of such sum by any mode whichever is earlier.

Where consideration is credited to any account in the books of account of the person liable to pay such sum, such credit of the sum is deemed to be the credit of such sum to the account of the payee and tax has to be deducted at source. The account to which such sum is credited may be called "Suspense Account" or by any other name.

Cases where the consideration for transfer of virtual digital asset is wholly in kind or partly in kind and partly in cash – In a case where the consideration for transfer of virtual digital asset is

- wholly in kind or in exchange of another virtual digital asset, where there is no part in cash; 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 such transfer,

the person responsible for paying such consideration has to, before releasing the consideration, ensure that tax required to be deducted has been paid in respect of such consideration for the transfer of virtual digital asset.

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Non applicability of TDS under section 393(1) [Table: Sl. No. 8(vi)] [Section 393(4) Table Sl. No. 12]

No tax is required to be deducted under section 393(1) [Table: Sl. No. 8(vi)], where the consideration is payable by the following person and the aggregate value of such consideration during the tax year does not exceed the specified threshold limit:

S. No.	Consideration is payable by (2)	Threshold limit (3)
12	**(a) An individual or a Hindu undivided family**- ▪ whose total sales, gross receipts or turnover from business does not exceed ₹ 1 crore or from profession does not exceed ₹ 50 lakh during the tax year immediately preceding the tax year in which such virtual digital asset is transferred or ▪ not having any income under the head "Profits and gains of business or profession"	≤ ₹ 50,000
	(b) Any person other than the person referred to in (a) above	≤ ₹ 10,000

Cross application of section 393(1) [Table: Sl. No. 8(v) and 8(vi)]

In case of a transaction where tax is deductible under section 393(1) [Table: Sl. No. 8(v)] i.e., tax deducted at source by e-commerce operator along with the section 393(1) [Table: Sl. No. 8(vi)], then, the tax shall be deducted under section 393(1) [Table: Sl. No. 8(vi)] and not section 393(1) [Table: Sl. No. 8(v)].

Non-applicability of section 397

The provisions of section 397 containing the requirement of obtaining TAN would **not** be applicable in case of person referred in **section 393(4) Table Sl. No. 12. Accordingly, an individual or a Hindu undivided family**-

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- whose total sales, gross receipts or turnover from business does not exceed ₹ 1 crore or from profession does not exceed ₹ 50 lakh during the tax year immediately preceding the tax year in which such virtual digital asset is transferred or
- not having any income under the head "Profits and gains of business or profession".

are not required to obtain TAN.

Due date of remittance to Government Account [Rule 218] and Furnishing statement and certificate of TDS u/s 393(1) [Table: Sl. No. 8(vi)]

<table>
<tr><th rowspan="2">Sl. No.</th><th>(1)</th><th>(2)</th><th colspan="2">(3)</th><th>(4)</th></tr>
<tr><th>Particulars</th><th>Person referred in section 393(4) Table Sl. No. 12(a)</th><th colspan="2">Exchange</th><th>Any other person</th></tr>
<tr><td>(i)</td><td>Rule 218 – Time of payment to Government Account</td><td>30 days from the end of the month of deduction</td><td colspan="3">In case of tax deducted in March, on or before 30th April.
In any other case, on or before 7 days from the end of the month of deduction.</td></tr>
<tr><td rowspan="3">(ii)</td><td>Rule 219 – Furnishing of Statement of TDS u/s 397</td><td></td><td colspan="3"></td></tr>
<tr><td>Form</td><td>Form 141</td><td>Form 142</td><td>Form 140</td></tr>
<tr><td>Time</td><td>Within 30 days from the end of the month of deduction</td><td colspan="2">Common for Exchange and any other person
Qtr ending – Due date
30th June – 31st July
30th Sep – 31st Oct</td></tr>
</table>

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			31st Dec	31st Jan
			31st March	31st May
(iii)	**Rule 215** – TDS Certificate	Form 132 to be furnished within 15 days from the due date of furnishing TDS statement in Form 141.	Form 131 to be furnished within 15 days from the due date of furnishing TDS statement in Form 142/Form 140.	

Power of the CBDT to issue guidelines [Section 400]

The CBDT has, with the prior approval of the Central Government, vide Circular no. 13/2022 dated 22.6.2022, issued the following guidelines. These guidelines would apply only in cases where transfer of virtual digital asset is taking place on or through an Exchange. In other cases (like peer to peer and others) provisions of section 393(1) [Table: Sl. No. 8(vi)] would apply.

Question 1: Who is required to deduct tax when the transfer of virtual digital asset is taking place on or through an Exchange and payment is made by the purchaser to the Exchange (directly or through a broker) and then from the Exchange it goes to seller directly or through the broker?

Answer: According to section 393(1) [Table: Sl. No. 8(vi)], any person who is responsible for paying to any resident any sum by way of consideration for transfer of virtual digital asset is required to deduct tax.

Thus, in a peer-to-peer (i.e., direct buyer to seller) transaction, the buyer (i.e., person paying the consideration) is required to deduct tax under section 393(1) [Table: Sl. No. 8(vi)]. The tax so deducted is required to be deposited with Government.

After deduction, the deductor is required to furnish a quarterly statement (in Form No. 140) for all such transactions of the quarter on or before the due date prescribed in the Income-tax Rules, 2026. For person referred in **section 393(4) Table Sl. No. 12(a),** Form 141 is in place.

It may be clarified that the TDS shall be on consideration for transfer of virtual digital asset less GST. **[Clarified by the CBDT vide circular no. 14/2022 dated 28.6.2022 for all other transactions not conducted on or through Exchange]**

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However, if the transaction is taking place on or through an Exchange, there is a possibility of tax deduction requirement under section 393(1) [Table: Sl. No. 8(vi)] at multiple stages. Hence, in order to remove difficulties for transactions taking place on or through an Exchange, the following clarifications have been issued by CBDT:

(i) **In a case where the transfer of virtual digital asset takes place on or through an Exchange and the virtual digital asset being transferred is owned by a person other than the Exchange:** In this case, buyer would be crediting or making payment to the Exchange (directly or through a broker). The Exchange, then, would be required to credit or make payment to the owner of virtual digital asset being transferred, either directly or through a broker. Since there are multiple players, to remove difficulty it has been clarified that:

- Tax may be deducted under section 393(1) [Table: Sl. No. 8(vi)] only by the Exchange which is crediting or making payment to the seller (owner of the virtual digital asset being transferred). In a case where broker owns the virtual digital asset, it is the broker who is the seller. Hence, the amount of consideration being credited or paid to the broker by the Exchange is also subject to tax deduction under section 393(1) [Table: Sl. No. 8(vi)].
- In a case where the credit/ payment between Exchange and the seller is through a broker (and the broker is not seller), the responsibility to deduct tax under section 393(1) [Table: Sl. No. 8(vi)] shall be on both the Exchange and the broker. However, if there is a written agreement between the Exchange and the broker that broker shall be deducting tax on such credit/ payment, then broker alone may deduct the tax under section 393(1) [Table: Sl. No. 8(vi)]. The Exchange would be required to furnish a quarterly statement (in Form 142) for all such transactions of the quarter on or before the due date prescribed in the Income-tax Rules, 2026.

(ii) **In a case where the transfer of virtual digital asset takes place on or through an Exchange and the virtual digital asset being transferred is owned by such Exchange:** In this case, there are no multiple players. The buyer is required to deduct tax under section 393(1) [Table: Sl. No. 8(vi)]. However, there may be a practical issue as the buyer may not know whether the virtual digital asset being transferred is owned by the Exchange or not.

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Hence, there may be genuine doubt in the mind of the buyer with regard to its responsibility to deduct tax under section 393(1) [Table: Sl. No. 8(vi)]. This difficulty would also be there if the buyer is buying virtual digital asset from an Exchange through a broker.

To remove this difficulty, it has been clarified that while the primary responsibility to deduct tax under section 393(1) [Table: Sl. No. 8(vi)], in this case, remains with the buyer or his broker, as an alternative the Exchange may enter into a written agreement with the buyer or his broker that in regard to all such transactions, the Exchange would be paying the tax on or before the due date for that quarter. The Exchange would be required to furnish a quarterly statement (in Form 142) for all such transactions of the quarter on or before the due date prescribed in the Income-tax Rules, 2026. The Exchange would also be required to furnish its income tax return and all these transactions must be included in such return. If these conditions are complied with, the buyer or his broker would not be held as assessee in default under section 398 for these transactions.

Meaning of certain terms:

(i) The term "Exchange" means any person that operates an application or platform for transferring of virtual digital assets, which matches buy and sell trades and executes the same on its application or platform.

(ii) The term "Broker" means any person that operates an application or platform for transferring of virtual digital assets and holds brokerage account/accounts with an Exchange for execution of such trades.

Question 2: Question no 1 was with respect to transactions where the consideration for transfer of virtual digital asset is not in kind. How will this operate in a situation where it is in kind or in exchange of another virtual digital asset?

Answer: In the above situation, the buyer will release the consideration in kind after seller provides proof of payment of such tax (e.g., Challan details etc.). In a situation where virtual digital asset "A" is being exchanged with another virtual digital asset "B", both the persons are buyer as well as seller. One is buyer for "A" and seller for "B" and another is buyer for "B" and seller for "A". Thus, both need to pay tax with respect to transfer of virtual digital asset and show the evidence to other so that virtual digital assets can then be exchanged. This would then be required to be reported in TDS statement along with challan number. Form 140 has included provisions for reporting such transactions. For persons referred in

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section 393(4) Table Sl. No. 12(a), Form 141 is in place. **[Also clarified by the CBDT vide circular no. 14/2022 dated 28.6.2022 for all other transactions not conducted on or through Exchange]**

However, if the transaction is through an Exchange there is practical issue in implementing this provision. In order to address this practical issue and to remove difficulty, it is clarified that in such a situation, as an alternative, tax may be deducted by the Exchange. Such an alternative mechanism can be exercised by the Exchange based on written contractual agreement with the buyers/sellers.

If such an alternative mechanism is exercised,

(i) the Exchange would be required to deduct tax for both legs of the transactions and pay to the Government. In the Form 142 it will need to report it as tax deducted on both legs of the transaction.

(ii) the buyer and seller would not be independently required to follow the procedure under Note 6 to Table to section 393(1) i.e., to ensure that the tax required to be deducted has been paid by the other person, before releasing the consideration.

(iii) The tax withheld in kind under section 393(1) [Table: Sl. No. 8(vi)] and converted into INR shall be deposited in the Government Account as per the timeline and process given in the Income-tax Rules 2026.

It has been clarified that there would not be any further TDS for converting the tax withheld in kind in the form of virtual digital asset into INR or from one virtual digital asset to another virtual digital asset and then into INR.

Question 3: Whether the provision of section 393(1) [Table: Sl. No. 8(ii)] is also applicable on transfer of virtual digital asset?

Answer: Without going into the merit whether virtual digital asset is goods or not, it is clarified that once tax is deducted under section 393(1) [Table: Sl. No. 8(vi)], tax would not be required to be deducted under section 393(1) [Table: Sl. No. 8(ii)]. **[Also clarified by the CBDT vide circular no. 14/2022 dated 28.6.2022 for all other transactions also not conducted on or through Exchange]**

Question 4: Whether the consideration for transfer of virtual digital asset shall be on Gross basis after including GST/commission or it shall be on "net basis" after exclusion of these items.

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Answer: In order to remove difficulty, it is clarified that the tax required to be withheld under section 393(1) [Table: Sl. No. 8(vi)] shall be on the "net" consideration after excluding GST/charges levied by the deductor for rendering service.

Question 5: In transactions where payment is being carried out through payment gateways, there may be tax deduction twice. To illustrate that a person "XYZ" is required to make payment to the seller for transfer of virtual digital asset. He makes payment of ₹ 1,00,000 through digital platform of "ABC". On these facts liability to deduct tax under section 393(1) [Table: Sl. No. 8(vi)] may fall on both "XYZ" and "ABC". Is tax required to be deducted by both?

Answer: In order to remove this difficulty, it is provided that in the above example, the payment gateway will not be required to deduct tax under section 393(1) [Table: Sl. No. 8(vi)] on a transaction, if the tax has been deducted by the person ("XYZ") required to make deduction under section 393(1) [Table: Sl. No. 8(vi)]. Hence, in the above example, if "XYZ" has deducted tax under section 393(1) [Table: Sl. No. 8(vi)] on ₹ 1,00,000, "ABC" will not be required to deduct tax under section 393(1) [Table: Sl. No. 8(vi)] on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from "XYZ" regarding deduction of tax.

Note: *Section 509 contains the obligation to furnish information on transactions of crypto assets. Section 446 contains the related penalty framework for failure/ inaccuracy in such reporting. These provisions are discussed in Chapter 18 Miscellaneous Provisions in Module 3.*

ILLUSTRATION 1

Compute the net income-tax payable (after TDS, if any) by Mr. Abhinav, aged 32 years, who has the following income for the tax year 2026-27:

(i) Interest on fixed deposits with SBI (Gross) ₹ 1,10,000

(ii) Interest on savings bank account with SBI ₹ 35,000

(iii) Consideration for transfer of VDA ₹ 4,62,000

(iv) Cost of acquisition ₹ 21,000

(v) Expenses on transfer of VDA ₹ 1,000

Mr. Abhinav has exercised option to shift out of default tax regime.

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SOLUTION

Total income (excluding Income from transfer of VDA) is below the basic exemption limit of ₹ 2,50,000. Therefore, tax on income, other than income from VDA, is Nil. Income of ₹ 4,41,000 (₹ 4,62,000 – ₹ 21,000) from transfer of VDA would be taxable@30% (plus cess of 4%). The tax on income from transfer of VDA would be ₹ 1,37,592, being 31.2% of ₹ 4,41,000. The expenses on transfer of VDA is not allowable as deduction.

Section 393(1) [Table: Sl. No. 8(vi)] provides for deduction of tax on payment of transfer of virtual digital asset to a resident at the rate of 1% of consideration. Hence, the transferee would have deducted tax of ₹ 4,620, being 1% of ₹ 4,62,000.

Tax@10% under section 393(1) [Table: Sl. No. 5(*ii*)] would have been deducted by SBI from ₹1,10,000. TDS u/s 393(1) [Table: Sl. No. 5(*ii*)] = ₹ 11,000

Net tax payable by Mr. Abhinav would be ₹ 1,21,970 (rounded off) [₹ 1,37,592 – ₹ 11,000 (TDS u/s 393(1) [Table: Sl. No. 5(ii)]) – ₹ 4,620 (TDS u/s 393(1) [Table: Sl. No. 8(vi)])].

ILLUSTRATION 2

Compute the net income-tax payable (after TDS, if any) by Mr. Siddhanth, aged 24 years, who has the following income for the tax year 2026-27

(i)	*Income from Salaries (computed)*	*₹ 8,40,000*
(ii)	*Interest on savings bank account with Axis Bank*	*₹ 12,000*
(iii)	*Consideration on transfer of VDA to Mr. Harsh*	*₹ 50,000*
(iv)	*Cost of acquisition of VDA transferred*	*₹ 5,000*

Mr. Harsh is employed with ABC Ltd. on a monthly salary of ₹ 50,000. In addition, he has interest on savings bank account with Bank of India.

Mr. Siddhanth has not exercised option to shift out of default tax regime. Ignore TDS on income other than VDA.

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SOLUTION

Tax payable by Mr. Siddhanth for T.Y. 2026-27

Particulars		Amount in ₹
Total income (excluding income from transfer of VDA) [₹ 8,40,000 + ₹ 12,000]		8,52,000
Income from VDA (₹ 50,000 – ₹ 5,000)		45,000
Total Income		**8,97,000**
Tax on income other than VDA		
Upto ₹ 4,00,000	Nil	
₹ 4,00,001 to ₹ 8,00,000 @5%	₹ 20,000	
₹ 8,00,001 to ₹ 8,52,000 @10%	₹ 5,200	25,200
Tax on income from VDA @30%		13,500
		38,700
Less: Rebate u/s 156		25,200
		13,500
Add: Health and education cess @ 4%		540
		14,040
Less: TDS under section 393(1) [Table: Sl. No. 8(vi)] [Since Mr. Harsh does not have income under the head "Profits and gains of business and profession" and the consideration payable by him does not exceed ₹ 50,000, he need not deduct tax u/s 393(1) [Table: Sl. No. 8(vi)] on consideration payable to Siddhanth]		Nil
Net tax payable		**14,040**

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TEST YOUR KNOWLEDGE

Questions

1. *Explain the core reasons for difference between the e-commerce transactions and the traditional business transactions causing difficulty to tax the income of e-commerce transactions.*

2. *E-commerce transactions have replaced concepts generally associated with international transactions traditionally. Discuss briefly the taxation issues involving such transactions.*

3. *From the following details compute the taxable income of Mr. Mohan for the sale and purchase of Bitcoins and NFT made during the year:*

Date	Particulars	Units	Amount (₹)
June 15, 2026	Purchase (Bitcoin)	5000	50,000
July 15, 2026	Sale (Bitcoin)	2500	25,500
July 20, 2026	Sale (Bitcoin)	2500	28,750
Expenses Incurred on Sale of Bitcoin			15,000
August 1, 2026	Purchase (NFT)	10000	1,50,000
August 16, 2026	Sale (NFT)	6000	89,000
August 31, 2026	Sale (NFT)	4000	56,000
Expenses Incurred on Sale of NFT			18,000

4. *Compute the net income-tax payable (after TDS, if any) by Mr. Raj, aged 32 years, who has the following income for the T.Y.2026-27*

(i)	Business loss	(₹ 3,18,000)
(ii)	Interest on fixed deposits with HDFC Bank	₹ 18,000
(iii)	Consideration on transfer of VDA	₹ 6,20,000
(iv)	Cost of acquisition of VDA transferred	₹ 20,000

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Answers

1. The core reasons for difference between e-commerce transactions and traditional business transactions causing difficulty to tax the income from e-commerce transactions under the Income-tax Act, 2025 are absence of national boundaries, no requirement of physical presence of goods and no requirement of physical delivery (in certain cases). Since e-commerce transactions are completed in cyberspace, it is often not clear as to the place where the transaction is effected, thereby causing difficulty in implementing source rule taxation.

2. The typical taxation issues relating to e-commerce are:

(1) the difficulty in characterizing the nature of payment and establishing a nexus or link between taxable transaction, activity and a taxing jurisdiction,

(2) the difficulty of locating the transaction, activity and identifying the taxpayer for income tax purposes.

3. **Computation of Taxable Income of Mr. Mohan**

	₹
Sale of 2,500 Bitcoin 15.07.2026	
Sale Consideration	25,500
Less: Cost of Acquisition (50,000 x 2,500/5,000)	25,000
Gain	**500**
Sale of 2,500 Bitcoin 20.07.2026	
Sale Consideration	28,750
Less: Cost of Acquisition (50,000 x 2,500/5,000)	25,000
Gain	**3,750**
Sale of 6,000 NFT 16.08.2026	
Sale Consideration	89,000
Less: Cost of Acquisition (1,50,000 x 6,000/10,000)	90,000
Loss on Sale of NFT [Neither setoff of loss nor carry forward of loss allowed]	**1,000**

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Sale of 4,000 NFT 31.08.2026	
Sale Consideration	56,000
Less: Cost of Acquisition (1,50,000 x 4,000/10,000)	60,000
Loss on Sale of NFT [Neither setoff of loss nor carry forward of loss allowed]	**4,000**
Taxable income	**4,250**

Note: VDA income would be taxed @30% under section 194(1) [Table Sl. No. 4] without any deduction of expenses.

4. As per section 109, business loss of the current year can be set off against income from other sources of that year. Therefore, business loss of ₹ 3,18,000 can be set off against interest of ₹ 18,000 from fixed deposits.

As per section 194(1) [Table Sl. No. 4], business loss cannot be set off against income from transfer of VDA. Therefore, balance business loss of ₹ 3,00,000 cannot be set off against income from VDA of ₹ 6,00,000 (₹ 6,20,000 – ₹ 20,000). The same has to be carried forward to T.Y. 2027-28 for set-off against business income of that year. Tax on Income from VDA would be ₹ 1,87,200 (i.e., 31.2% of ₹ 6 lakh).

Section 393(1) [Table: Sl. No. 8(vi)] provides for deduction of tax on payment on transfer of virtual digital asset to a resident at the rate of 1% of consideration. Hence, the transferee would have deducted tax of ₹ 6,200, being 1% of ₹ 6,20,000.

Net tax payable by Mr. Raj = ₹ 1,87,200 – ₹ 6,200 = ₹ 1,81,000.

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