

A taxing time for crypto assets

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The Finance Act, 2022 recently enacted by parliament has introduced a special tax regime for virtual digital assets (VDA), more generally known as crypto-assets.



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Trading in crypto-assets is a speculative and volatile, though sometimes lucrative investing ecosystem. It has gained popularity among new-age investors. By some estimates, there are over 10 million crypto-asset owners in India and the number is rising. Trading in crypto-assets is not prohibited. However, there is no regulatory framework for this trade either. Several cryptocurrency exchanges operate in India, including CoinSwitch Kuber, WazirX, Zebpay and CoinDCX. Investors also have access to foreign crypto exchanges such as ifnex.

Incomes derived from trading in crypto-assets were taxable under the normal provisions of the Income Tax Act, 1961 (act). However, from 1 April 2022, incomes accruing from the transfer of VDAs are subject to the new tax regime.

VDAs are widely defined as any information, code, number or token (not being official currency), generated through cryptographic means or otherwise, providing a digital representation of value which is exchanged with or without consideration, or functions as a store of value or a unit of account

and includes its use in any financial transaction or investment, and can be transferred, stored or traded electronically; a non-fungible token (NFT) or any other token of a similar nature; and any other digital asset as may be notified by the government.

NFTs are blockchain-based digital units used to transfer or validate ownership of unique digitally-collectable items, such as celebrity autographs, photos or videos of iconic events. Each NFT is unique and not interchangeable with another digital token and exists as a cryptographic record on a blockchain. Thus, every kind of digital asset that can be transferred, stored or traded electronically is effectively covered by the definition of VDAs.

Under the new regime, income accruing to any person from the transfer of VDAs will be subject to tax at a flat rate of 30%, with no deduction allowed for any expense other than the purchase price of the VDA. The new provisions apply whether the VDAs are held as capital assets or as trading assets. Thus, even if a person holds VDAs as capital assets and not as stock in trade, the income accruing from the transfer of VDAs will be taxed at a flat rate of 30% and not at the rate of 20% which is applicable to long term capital gains.

Losses arising from the transfer of VDAs will not be deductible for computing taxable income on the transfer of VDAs. Further, losses from the transfer of VDAs will not be allowed to be set off against any other income nor will they be allowed to be carried forward and set off against income of future years. While income from the transfer of VDAs has become taxable the taxpayer will get no relief in respect of losses arising from their transfer.

The new provisions impose a liability on the buyers of VDAs to withhold tax at the rate of 1% of the transfer consideration when remitting the transfer consideration to any Indian tax resident. However, if the payment for the transfer of VDA is either wholly in kind or in exchange for another VDA and not in cash, or partly in cash and partly in kind and the cash component is not sufficient to meet the tax liability the buyer is required to ensure that the tax due has been paid by the seller in respect of the transaction before remitting the transfer consideration to them.

However, there will be no liability to withhold tax on the transfer of VDAs where the consideration is payable by a specified individual and the aggregate value does not exceed INR50,000 (USD645) during any financial year, and where the consideration payable for the transfer of the VDAs does not exceed INR10,000 during any financial year.

Lastly, an amendment to section 56 of the act provides that if any person receives a gift of VDAs in any financial year and their aggregate fair market value exceeds INR50,000 then the fair market value

in excess of INR50,000 will be taxed as income of the recipient at the applicable slab rate.

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