

CRYPTOCURRENCY TAXATION (FINANCE ACT, 2022)

SECTION 2(47A): DEFINITION OF VIRTUAL DIGITAL ASSET

"virtual digital asset" 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;

♦ ANALYSIS OF AMENDMENTS MADE BY FINANCE ACT, 2022 ♦

1. **Receipt of virtual digital asset by gift or for inadequate consideration [Section 56(2)(x)]** - Section 56(2)(x), *inter alia*, provides that where a person receives any immovable property without consideration and the aggregate fair market value of which exceeds ₹ 50,000, the whole of aggregate fair market value of such property shall be chargeable to tax in the hands of recipient. Similarly, if movable property is received for a consideration which is less than the aggregate fair market value of the property by an amount exceeding ₹ 50,000, then the difference between aggregate fair market value and the consideration is chargeable to tax in the hands of recipient.

Amendment - The aforesaid provisions will also be applicable in the case of receipt of virtual digital asset by gift or for inadequate consideration. The definition of "property" has been modified (with effect from the assessment year 2023-24) to include "virtual digital asset" within the scope of movable assets.

Thus, after the amendment, property shall mean:

- (a) Shares and securities;
- (b) Jewellery;
- (c) Archaeological collections;
- (d) Drawings;
- (e) Paintings;
- (f) Sculptures;
- (g) Any work of art;
- (h) Bullion; and
- (i) Virtual Digital Asset

Thus, if a person receives a virtual digital asset without consideration (gift) or for inadequate consideration and the value of such benefit exceeds ₹ 50,000 it shall be taxable in the hands of the recipient under Section 56(2)(x) as income from other sources.

It is be noted that the property defined in section 56(2)(x) should be the 'capital asset of the assessee'. Thus, properties in question must constitute capital assets in the hands of the recipient.

However, the following shall be excluded from the definition of Virtual Digital Assets:

- (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 application.**

2. **Section 115BBH**

The taxation of VDA shall be governed by section 115BBH.

- (A) The taxation under section 115BBH shall be as under:
 - (a) There should be a **transfer** of any VDA, whether held **as capital asset or not**;
 - (b) The transfer of VDA should result in income;
 - (c) Such income should be included in the total income;
 - (d) The tax on the income from the transfer of such VDA shall be calculated **at the rate of 30%**;
 - (e) **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 in computing such income;**
 - (f) **No set off of loss from transfer of a VDA shall be allowed against income computed under any provision of this Act; and**
 - (g) **Such loss shall not be allowed to be carried forward to succeeding assessment years.**
- (B) The income arising from the transfer of VDAs can be classified under any of the following heads of income:
 - (a) Profits and gains from business or profession (PGBP);
 - (b) Income under the head of capital gains; or
 - (c) Income from other sources.
- (C) **Rebate under section 87A** - A resident individual can claim a tax rebate under Section 87A if his total income during the previous year does not exceed Rs. 500,000. The total rebate available under this provision is limited to Rs. 12,500. Thus, if total tax excluding cess is less than or equal to ₹ 12,500, then the whole amount can be claimed as a rebate by the assessee. The rebate is allowed to all eligible assessees unless it is expressly prohibited. For example, Section 112A prohibits rebate under Section 87A from an income taxable under this provision.

As Section 115BBH does not prohibit such rebate, and it is neither a deduction nor allowance, it should be allowed to a resident individual from the tax computed under this provision.

(D) **Treatment of loss**

Sub-section (2) of Section 115BBH starts with a non obstante clause and contains the following two clauses:

- (1) Clause (a) provides that no set-off of any loss shall be allowed to the assessee in computing the income referred to in Section 115BBH(1)(a); and
- (2) Clause (b) provides that no set-off of loss from the transfer of the VDA computed under Section 115BBH(1)(a) shall be allowed against income computed under any provision of this Act, and such loss shall not be allowed to be carried forward to succeeding assessment years.

Both the clauses attempt to ring-fence the losses arising from VDA. **It neither allows any loss to set-off against income from VDA nor allows loss from VDA to set-off against income computed under any provision of this Act.**

The expression used in clause (b) is "any provision of this Act". Thus, it shall include even income computed under Section 115BBH, i.e., **income from transfer of VDA**. In simple words, any loss arising from the transfer of VDA would be a dead loss, and it will not be allowed to be adjusted even against income arising from the transfer of another VDA (whether of the same category or not).

(E) **No Benefit of Indexation:**

If income from transfer of VDA is classified as Capital gains, then no benefit of indexation shall be allowed.

(F) **Long Term Ignored**

Even if the income from transfer of VDA is classified as Capital gains which are long term, the benefit of lower rate of tax on capital gains under section 112 is not allowed.

EXAMPLES

Example 1: Mr. A earns the following income from the virtual digital assets. The tax on his taxable income shall be computed as under:

Description	Case 1	Case 2	Case 3	Case 4
Trading income/(loss) from investment in Bitcoins	(10,00,000)	(10,00,000)	10,00,000	10,00,000
Income from Capital Gains				
• From Sale of Bitcoins	1,00,000	(1,00,000)	1,00,000	2,00,000
• From Sale of Non-Fungible Token	2,00,000	9,00,000	(6,00,000)	3,00,000
Income from Other Sources				
• Bitcoin received as a gift from brother (FMV Rs. 10 lakhs)	-	-	-	-
• Bitcoin received as a gift from friend (FMV Rs. 1 lakh)	-	-	-	-
Gross Total Income	4,00,000	10,00,000	12,00,000	16,00,000
Less: Deductions under Chapter- VI (not allowed)	-	-	-	-
Taxable Income	4,00,000	10,00,000	12,00,000	16,00,000

Tax on Normal Income	-	-	-	-
Tax on sale of Virtual Assets	90,000	2,70,000	3,30,000	4,50,000
Total	90,000	2,70,000	3,30,000	4,50,000
Less: Rebate under Section 87A	12,500	-	-	-
Tax Liability	77,500	2,70,000	3,30,000	4,50,000
Total	90,000	2,70,000	3,30,000	4,50,000
Less: Rebate under Section 87A	12,500	-	-	-
Tax Liability	77,500	2,70,000	3,30,000	4,50,000
Add: Surcharge	-	-	-	-
Add: Education Cess	3,100	10,800	13,200	18,000
Total Tax Liability	80,600	2,80,800	3,43,200	4,68,000

Note: The benefit of the maximum exemption limit shall not be allowed from the income taxable under Section 115BBH. However, the rebate under Section 87A shall be allowed.

Example 2: Mr. A has deposited ₹ 10 lakhs in his account opened with an exchange platform. He has done multiple transactions in Bitcoin for over a month. The computation of income and TDS implications are explained in the below table:

Date of purchase	Cost of acquisition	Date of transfer	Sales consideration	TDS at 1%	Cumulative balance	Taxable income
Opening balance	-	-	-	-	10,00,000	-
01-04-22	9,50,000	02-04-22	9,70,000	9,700	10,10,300	20,000
03-04-22	8,75,000	03-04-22	8,25,000	8,250	9,52,050	-
05-04-22	9,50,000	06-04-22	9,55,000	9,550	9,47,500	5,000
07-04-22	9,40,000	07-04-22	9,65,000	9,650	9,62,850	25,000
08-04-22	9,60,000	10-04-22	8,75,000	8,750	8,69,100	-
11-04-22	8,50,000	12-04-22	8,60,000	8,600	8,70,500	10,000
13-04-22	8,25,000	14-04-22	8,50,000	8,500	8,87,000	25,000
15-04-22	8,00,000	15-04-22	7,90,000	7,900	8,69,100	-
17-04-22	8,40,000	18-04-22	8,42,000	8,420	8,62,680	2,000
19-04-22	7,75,000	21-04-22	7,75,000	7,750	8,54,930	-
22-04-22	8,25,000	24-04-22	8,35,000	8,350	8,56,580	10,000
25-04-22	8,05,000	26-04-22	7,95,000	7,950	8,38,630	-
27-04-22	6,50,000	29-04-22	7,00,000	7,000	8,81,630	50,000
29-04-22	8,80,000	30-04-22	5,50,000	5,500	5,46,130	-
Total				1,15,870		1,47,000

Mr. A will be liable to pay tax at 30% plus cess on his business income of ₹ 1,47,000, which will be ₹ 45,864. He can file an income-tax return to claim the refund of ₹ 70,006 (₹ 1,15,870 less ₹ 45,864) towards the excess tax paid by him by way of TDS under Section 194S. The loss of ₹ 4,85,000 will be a dead loss that can neither be set-off against any other income nor can be carried forward to subsequent years.

3. **Section 194S**

- (A) **Tax is required to be deducted from the gross amount of consideration paid to the resident person for the transfer of virtual digital assets.**

However, in the following cases, before releasing the consideration, the person responsible shall ensure that tax required to be deducted has been paid in respect of such consideration for the transfer of virtual digital asset:

- (a) Where consideration is wholly in kind;
- (b) Where a transaction is in exchange for another virtual digital asset, and there is no part in cash; or
- (c) Where consideration is 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 liability in such cases may be discharged by:

- (a) "**payer**" by grossing up and paying tax out of his pocket;
- (b) "**payee**" gives cash to the payer to meet TDS liability;
- (c) debiting TDS under section 194S to the account of the payee if it has a credit balance, so that amount will be paid net of TDS under section 194S whenever credit balance is paid to the payee;
- (d) "**payee**" himself pays tax and give challan to the payer;
- (e) taking a declaration from the payee that he will pay the applicable tax on it.

Option (e) clearly is no option as it falls short of the expression 'ensure that tax required to be deducted has been paid'.

(B) **Exemption from deduction of tax at source**

No tax shall be deducted under this provision in the following circumstances:

- (a) **Consideration is below Rs. 10,000** - No tax shall be deducted under this provision if the consideration is payable by any person (other than a specified person) and its aggregate value does not exceed ₹ 10,000 during the financial year [Section 194S(3)(b)].
- (b) **Consideration is below Rs. 50,000** - No tax shall be deducted under this provision if the consideration is payable by the following specified persons and its aggregate value does not exceed ₹ 50,000 during the financial year:
 - (i) **An individual or a HUF**, whose total sales, gross receipts or turnover does not exceed **Rs. 1 crore in case of business or ₹ 50 lakh in case of a profession**, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred;
 - (ii) **An individual or a HUF who does not have any income under the head profits and gains of business or profession** [Section 194S(3)(a) read with Explanation to section 194S].

Summary of TDS threshold limits

Category of payer	Threshold limit of turnover or gross receipt	Threshold limit of consideration
Company	-	₹ 10,000
Firm or LLP	-	₹ 10,000
Individual	<ul style="list-style-type: none"> • ₹ 1 crore (for business) • ₹ 50 lakhs (for profession) 	₹ 50,000
Any other Individual	-	₹ 10,000
HUF (engaged in business or profession)	<ul style="list-style-type: none"> • ₹ 1 crore (for business) • ₹ 50 lakhs (for profession) <p>(Also includes a HUF not engaged in any business or profession)</p>	₹ 50,000
Any other HUF	-	₹ 10,000
Any other person	-	₹ 10,000

Example: The Applicability of TDS in the different scenarios has been enumerated in the below table:

Date of Sale or Exchange	Nature of transaction	Consideration	PAN of payee available	Payer is a specified person	TDS	Remarks
01-03-2022	Cash	15,00,000	Yes	No	-	Not applicable on transaction done before 01-04-2022
01-07-2022	Cash	9,000	Yes	-	-	Consideration is less than Rs. 10,000 in a financial year
01-07-2022	Cash	40,000	Yes	Yes	-	Consideration is less than Rs. 50,000 in a financial year
01-07-2022	Cash	15,00,000	Yes	No	15,000	TDS at the rate of 1% of consideration
01-07-2022	Cash	15,00,000	No	No	3,00,000	TDS at the rate of 20% of consideration under Section 206AA
01-07-2022	Car	15,00,000	Yes	Yes	15,000	Before releasing the consideration, the deductor shall ensure that tax has been deducted and paid in respect of such consideration.