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Regulatory Clarity on Crypto Assets

Why in news?

One of the most striking moves in the Union Budget's taxation proposals for 2022-23 is the introduction of a taxation regime for virtual digital assets.

What are virtual digital assets?

- Virtual digital assets are defined as
  - any information or code or number or token (not being Indian currency or any foreign currency)
  - generated through cryptographic means or otherwise
  - providing a digital representation of value which is exchanged with or without consideration
  - promise or representation of having inherent value
  - functions as a store of value or a unit of account
  - includes its use in any financial transaction or investment, but not limited to investment schemes
  - can be transferred, stored or traded electronically
- Virtual digital assets include evolving manifestations of cryptocurrencies, codes and non-fungible tokens.

> *A non-fungible token (NFT) is a non-interchangeable unit of data stored on a blockchain, that can be sold and traded.Unlike fungible tokens like crypto currencies, they cannot be traded or exchanged at equivalency.*
>
> *NFTs can be used to represent real-world items like artwork and real-estate. NFTs can also be used to represent individuals' identities, property rights.*

To know about virtual digital assets vs digital currency, click here

What is the government's approach towards virtual digital assets?

- **Taxation**- The government has proposed to tax all profits from transactions in such assets at 30% along with the applicable surcharge and cess,
- All transfers of such assets will attract 1 % tax deducted at source (TDS).
- **Gifting-** The term 'property' under the IT Act is being expanded to include virtual digital

assets so that such assets received as a gift shall be taxable except when received from relatives.

- Gifts of virtual digital asset will now be taxable at 30% in the hands of **the recipient**. However, gifting to the close relative which includes wife or children, is not liable to tax.
- **Enforcement**- The new virtual digital asset tax comes into force on April 1, 2022.
- The trading profits will be taxed at, according to crypto industry players, a higher rate compared to other jurisdictions.
- **Off losses-** No deductions will be allowed on account of setting off losses from such trading or from any other capital losses and the only deduction permitted would be the cost of acquiring the asset.
  - For instance, if you have invested Rs 1 lakh in crypto and sold for Rs 1.5 lakh, then only the gain of Rs 50,000 will be taxed without any other deduction.
- **Legitimacy-** The taxation regime by itself, does not grant legitimacy to the trade in these currently unregulated assets and a consultation process is underway, which will determine the legal position of such assets.

What is the significance of the move?

- The Budget proposals aim to tax both the transfer and sale of virtual assets.
- Exchanging a Bitcoin for an Ethereum is covered within the definition of transfer, whereas, sale of cryptocoin involves normal cash or currency.
- Though the Government may still not consider them fully legitimate, the tax regime indicates the hard option of an outright ban that was signalled in the proposed crypto law last year.
- It also solves the concerns of being lured by crypto players' misleading ads, with no norms brought in place, and no regulatory watch.
- The Government had also indicated a forward-looking approach to crypto market oversight.

What are the concerns?

- **Lack of clarity**- There rises a question of whether transferring my coin between my own wallets is taxable or not.
- We need to get more clarity with respect to what they mean by transfer.
- **No set-offs-** No set-offs will be allowed on losses incurred in the transfer of virtual assets.
- This means losses or profits of crypto cannot be adjusted with any other income or losses in the current financial year and losses cannot be carried forward to the next year.
- **Heavy taxation-** Virtual assets are now taxed so highly that only the rich can afford to invest in crypto.

- **Delay**- The delay in arriving at a decision prevents Indian start-ups and innovators from developing products and ideas that can be scaled up globally given the nature of these assets.

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