TAXATION OF CRYPTO CURRENCY TRANSACTIONS

[CA. P.N. SHAH]

In this year's Budget no ban is proposed to be imposed on dealing in Crypto Currencies or other similar Digital Currencies. In para 111 of the Budget Speech the Finance Minister has stated that "Introduction of Central Bank Digital Currency (CBDC) will give a big boost to digital economy. Digital Currency will also lead to a more efficient and cheaper management system. It is, therefore, proposed to introduce Digital Rupee, using block chain and other technologies, to be issued by the Reserve Bank of India starting 2022-23".

Further, in Para 131 of the Budget Speech the Finance Minister has stated that "There has been a phenomenal increase in transactions in virtual digital assets. The magnitude and frequency of these transactions have made it imperative to provide for a specific tax regime. Accordingly, for taxation of virtual digital assets, I propose to provide that any income from transfer of any virtual digital asset shall be taxed at the rate of 30 per cent".

To implement this decision the following amendments are proposed in various sections of the Income tax Act effective from **A.Y. 2023-24 (F.Y. 2022 – 23)**

1. **Section 2(47A)**: This is a new section which defines the term "Virtual Digital Asset" (VDA) to mean any information or code or number or token (other than an Indian Currency or a 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. This definition also includes Non-fungible token or any other token

of a similar nature. It also includes any other digital asset as may be notified by the Central Government. This definition comes into force from 1.4.2022.

2. **Section 115BBH**: This is a new section which comes into force from **A.Y. 2023-24 (F.Y:2022-23)**. It proposes to provide -

(i) Where the total income of an assessee includes any income from transfer of VDA, income tax on such income is payable at the rate of 30% plus applicable Surcharge and Cess. It may be noted that in this provision no distinction is made between income from transfer of VDA in the course of trading or VDA held as capital asset.

(ii) No deduction in respect of any expenditure (other than cost of acquisition) or allowance or set-off of any loss shall be allowed to the assessee under any provision of the Income tax Act in computing income from transfer of such VDA.

(iii) No set off of loss from transfer of the VDA shall be allowed against income computed under any other provision of the Income tax Act and such loss shall not be allowed to be carried forward.

3. **Section 56(2)(x):** Gift of VDA received by a non-relative is proposed to be taxed under section 56(2) (x) as Income from Other Sources. If a person receives gift of VDA of the aggregate market value exceeding Rs.50,000/- from a non-relative or VDA is transferred to him by a non-relative for a consideration where the difference between the consideration paid and its market value is more than ₹50,000/-, tax will be payable by him as provided in section 56(2) (x). Amendment in Section 56(2) (X) provides that the expression "Property" includes "VDA". The CBDT will have to frame Rules for determination of Market Value of VDA for the purposes of Section 56(2) (x).

4. **Section 194-S:** (i) This is a new section which is proposed to be inserted from 1/7/2022. This section proposes to provide that any specified person paying to a Resident consideration for transfer of VDA shall deduct tax at 1% of such consideration. In a case where the consideration for transfer of VDA is (a) wholly in kind or in exchange of another VDA, where there is no payment in

cash or (b) partly in cash and partly in kind, but the part in cash is not sufficient to meet the liability of TDS in respect of whole of such transfer, the payer shall ensure that tax is paid in respect of such consideration before realizing the consideration. However, this TDS provision does not apply if such consideration does not exceed Rs.10,000/- in the financial year.

(ii) This section defines the term "Specified Person" to mean a payer of any consideration for VDA (a) being an Individual or HUF whose total sales, gross receipts or turnover from business or profession does not exceed Rs.1 Cr.in the case of business or Rs.50 lakhs in the case of profession, during the financial year immediately preceding the year in which such VDA is transferred or (b) being an Individual or HUF who does not have income under the head "Profits and Gains of Business or Profession".

(iii) In the case of a Specified Person –

(a) The provisions of section 203A relating to Tax Deduction and Collection Account Number and 206AB relating to special provision for TDS for non-filers of Income tax Returns will not apply.

(b) If the value or the aggregate value of such consideration does not exceed Rs.50,000/- during the financial year no tax is required to be deducted.

(iv) It may be noted that in case TDS is deducted under this section, no tax is required to be deducted or collected at source in respect of such transaction under any other section in Chapter XVII.

(v) In the case of a transaction to which Section 194-O and 194-S is applicable, then tax is to be deducted under section 194-S and not under section 194-O.

5 To sum up: In the Memorandum explaining the provisions of the Finance Bill, 2022, it is stated that "Virtual digital assets have gained tremendous popularity in recent times and the volumes of trading in such digital assets has increased substantially. Further, a market is emerging where payment for transfer of virtual digital assets can be made through another such asset.

Accordingly, a new scheme to provide for taxation of such virtual digital assets has been proposed in the Bill".

Reading the above amendments some issues arise for consideration.

(i) The new provisions do not clarify as to under which head the income from transfer of VDA will be taxable i.e. whether it is income from Business or Capital Gain or Income from Other Sources.

(ii) A transfer of VDA in exchange of another VDA is liable to tax. It is not clear as to how the market value of the VDA transferred or VDA received in exchange will be determined. The Central Government will have to frame Rules for this purpose.

(iii) VDA is defined under section 2(47 A) and this definition comes into force on 1.4.2022. A question will arise as to whether income from transfer of similar VDA prior to 1.4.2022 will be taxable and if so whether it will be considered as a "Capital Asset" as defined in Section 2(14). Under this definition "Capital Asset" means "Property of any kind held by an assessee, whether or not connected with his business or profession".

(iv) If income arising from transfer VDA before 1.4.2022 is considered as taxable, a question will arise whether loss in such transactions will be allowed to be adjusted against other income and unabsorbed loss will be allowed to be adjusted against income in subsequent years.

We will have to wait for some clarification from CBDT on all the above issues.