



Virtual Digital Assets - GST issues
The Dbriefs Geography Updates series

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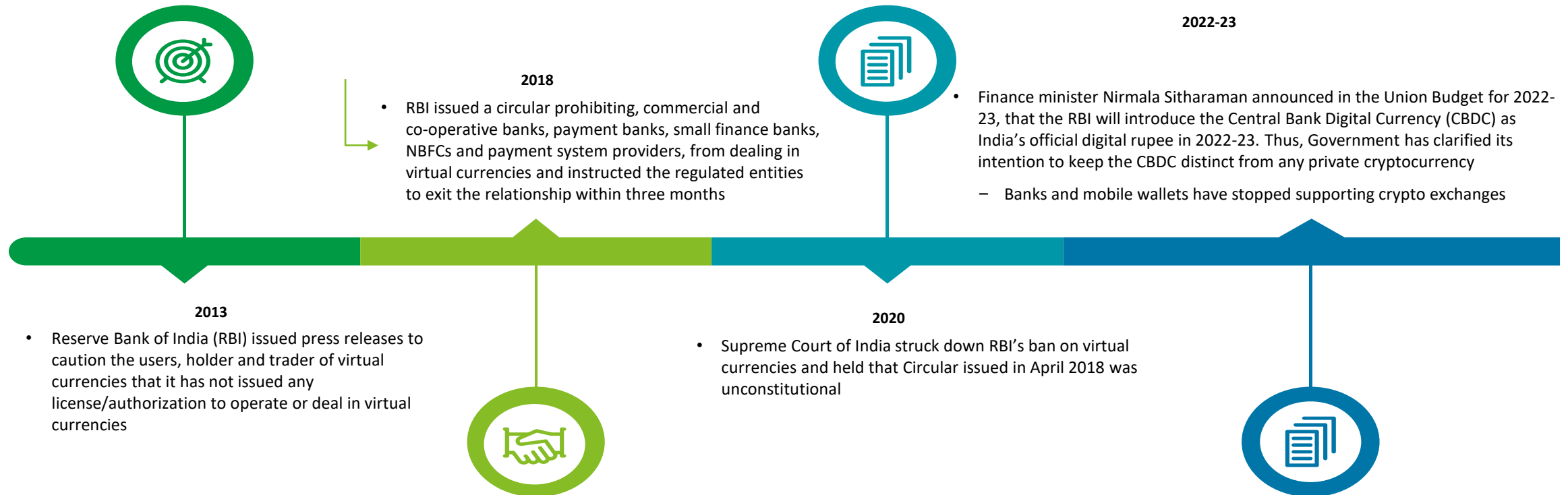
Agenda

- Virtual Digital Assets (VDAs)
 - India Perspective
 - Key terms
 - Income tax on VDAs
 - GST on VDAs
 - Classification of VDAs under the traditional definition of goods and services
 - Situs of the transaction
- Metaverse
 - GST Issues
- Questions and answers

Virtual digital assets

Landscape in India

- As per United Nations Conference on Trade and Development Report 2021, more than 7 per cent of Indian population owns digital currency
- IP owners such as music artist, sports personalities and media houses are looking at Non-Fungible Tokens (NFTs) and Metaverse as additional revenue stream
- No official law or regulation that forbids or restricts an Indian resident from buying or selling VDAs as of now
 - The Advertising Standards Council of India (ASCI), India’s self–regulatory body for advertising, has issued guidelines to protect consumer interest in light of aggressive advertising of Virtual Digital Assets (VDA)
- **Regulatory framework**



Polling question 1

Are there laws in your country relating to Virtual Digital Currency from regulatory perspective?

- Yes
- No
- Work in progress

Virtual digital assets

Key terms

- VDA has been defined to mean under the Indian Income Tax Laws as
 - 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
- A token refers to any cryptographically-secured digital representation of value that can be transferred, stored or traded electronically. Broadly token can be classified into 3 categories
 - Payment token - Also known as cryptocurrencies' such as Bitcoin, Litecoin and equivalents. They are not issued or backed by a central bank or other central body. They do not provide the types of rights or access provided by security or utility tokens, but are used as a means of exchange or for investment
 - Security token - A digital token that provides security (e.g., equity or bond) investment in an entity. These may provide rights such as ownership, repayment of a specific sum of money, or entitlement to a share in future profits
 - Utility token - A digital token that represents a right to a good or a service. They can be redeemed for access to a specific product or service
- NFT is a non-interchangeable unit of data stored on a blockchain that can be sold/traded. Each token is uniquely identifiable and is backed by a digital asset. NFT claims to provide a public certificate of authenticity. Legal rights conveyed by an NFT depend on the smart contract embedded into the NFT

Virtual digital assets

Income tax

- From 1 April 2022, income from the transfer of any VDA to be taxed at 30% (plus surcharge and cess)
- VDA have been defined in a broad manner
 - Term includes crypto currency as well as NFTs and other digital assets to be notified
 - In June 2022, following were excluded from the definition of VDA
 - Gift card or vouchers, being a record that may be used to obtain goods or services or a discount on goods or services
 - 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
 - Subscription to websites or platforms or application
 - NFT whose transfer results in legally enforceable transfer of ownership of underlying tangible asset
- Restrictions on deductions in computing taxable income
 - No deduction allowed on any expenditure (other than cost of acquisition) or allowance or in setting off-of any loss
 - Set-off of losses incurred on transfer of VDA against any other income is not permitted
 - Carry forward of such losses to subsequent years is also not permitted
- Gift of VDA is also taxable
- Payment of consideration to a resident on the transfer of VDA shall be subject to withholding tax at 1% from 1 July 2022

Virtual digital assets

Goods and services tax

- Central Board of Indirect Tax and Customs (CBIC) has set up an internal committee to examine the taxability of VDAs. The Committee is yet to publish the specifics of taxability of VDAs (including NFTs)
- Media reports suggest that some of the Crypto exchanges and NFT sellers are investigated
- Investigating authorities propose to levy GST on the platform fee and categorize NFTs as supply of goods
- **Key considerations**
 - **Categorization of VDA**
 - Goods means movable property, other than money and securities but includes actionable claims
 - Money means Indian legal tender/foreign currency, any instrument recognized by RBI
 - Securities means as per Securities Contract (Regn) Act 1956
 - Actionable claim – Defined as per Transfer of Property Act 1882
 - Service means anything other than goods, money, and securities
 - **Situs of transaction**
 - Basic rule for applicability of GST is that place of supply should be in India
 - Movement of goods, Location of assets/goods at the time of transfer
 - Signing of agreement
 - Location of supplier/recipient

Polling question 2

In your country, VDA are classified as goods or services?

- Goods
- Services
- Don't know/not applicable

Virtual digital assets

Goods and services tax



- Location of supplier and receiver
- Nature of transaction – agreement?
- Qualification of the transaction as export/import
- Supply for consideration – Barter?
- Valuation
- Documentation
 - Tax invoice
 - Input tax credit

Metaverse

Goods and services tax

1

Jurisdiction of metaverse?

Which Jurisdiction (country/ state) has the legal right to tax the digital transactions

- What are the rules for export and import transactions?

2

What is the Supply?

Each transaction in Metaverse to be analysed to determine if it's a goods or services transactions?

- Sale of virtual land – is it sale of VDA or immovable property?

3

What is the place of supply?

Indian GST does not recognize virtual world

- Will the digital location of service provider and receiver suffice
- So, is it possible to argue that GST is not applicable?

4

Consideration

Ambiguity on whether crypto-currency can be considered as a mode of receipt of consideration

5

International consensus

OECD is in the process of potentially creating a common crypto tax framework in an attempt to gain consensus among jurisdiction

6

Indian government

News reports suggest that the Indian government is working on characterization of crypto-assets for the GST purpose and related rules

Virtual digital assets

Disclosures requirements

- March 2022 – OECD published public consultation document outlining a framework for reporting and exchange of information on digital asset activity
- March 2022 - US Treasury released proposals in the fiscal year 2023 “Greenbook” including a proposal that effectively bring digital assets into the scope of FATCA reporting
- 10 October 2022 - OECD issues final Crypto –Asset Reporting Framework (CARF) and CRS update guidance
 - A framework for reporting and information exchange on digital asset - Acquisitions, dispositions, payments and other transfers
 - Due diligence on customers and controlling person
 - Guidance for reporting of e-money and CBDCs
 - CRS amendments to integrate digital assets and align with FATF
- The Ministry of Corporate Affairs (MCA) has amended Schedule III of the Companies Act, 2013, effective 1 April 2021, requiring companies to disclose details of crypto/virtual -currency.
- When the company has traded or invested in crypto/virtual currency during the financial year, the following details to be disclosed
 - profit or loss on transactions involving crypto currency or virtual currency, — amount of currency held as at the reporting date,
 - deposits or advances from any person for the purpose of trading or investing in crypto currency

Question and answers

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