

Taxation of Virtual Digital Assets – Income Tax INDIA

I] Explanation & Definitions:

A virtual currency means a digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and / or (2) a unit of account; and / or (3) a store of value, but are not legal tenders. It is a valid payment of goods and services.

Virtual Digital Asset (VDA):

- 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/any other token of similar nature, by whatever name called;
- c) any other digital asset, as the Central Government may, specify in Official Gazette.
[Reference: Section 2(47A)]

II] Taxation:

Computation on transfer: Tax on sale consideration of transfer of VDA: **30%**

No deduction except for cost of acquisition.

No loss on transfer of VDA will be allowed to be carried forward or set off.

[Reference: Section 115BBH]

Cost of acquisition: In case of gift received as VDA, amount on which tax is paid u/s 56(2)(x) if any or in case of any other, cost to the previous owner under cost of acquisition.

The income from the transfer of VDA can be offered to tax under the head of Business or Profession or Other sources or Capital Gains depending on the nature of holding the VDA.

Other sources:

Tax on gift (receipt without consideration) of VDA for value exceeding Rs. 50,000: Tax rate applicable to the assessee.

In the case of such gifts of VDA through inheritance/will, marriage, death, are not applicable to taxation.

[Reference: Section 56(2)(x) – Explanation (b)]

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III] Withholding Tax for Residents (Tax Deducted at Source “TDS”)

Applicability: On aggregate value of consideration paid/payable on transfer exceeding Rs. 50,000 in a financial year. Tax will be withheld on the net consideration after excluding GST/charges levied by the deductor.

However, where a transaction is subjected to withholding under both sections 194-O & 194S, then taxes will be withheld under **section 194S**.

Deductor	Threshold of turnover/gross receipts of the deductor in immediate FY	Threshold of consideration paid/payable
Individual/HUF having business/profession	Upto Rs. 1 Cr. (for business) Upto Rs. 50 lakhs (for profession)	Rs.50,000
Individual/HUF not having business/profession	-	Rs. 50,000
Another person	-	Rs. 10,000

Rate of withholding: 1%

In case of specified persons, the provisions of section 203A and 206AB will not be applicable. *[Reference: Section 194S]*

IV] Withholding Tax for Non- Residents - TDS:

Section 195 will be applicable to the payer (whether resident or non-resident) on any payment of consideration on transfer of VDA to a non-resident or foreign company. The applicable tax for deduction would be 30%.

[Reference: Section 195]

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V] Important points:

1. Note: Add applicable surcharge and education cess to above taxes.
2. Tax on Airdrops:
 - Taxed @30% on the value determined as per Rule 11UA, i.e. at the fair market value of the tokens as on the date of receipt on exchanges.
 - If you sell, swap/spend those tokens later, then there is **30% tax** on gains.
3. Tax on Mining Cryptocurrency:
 - Mining income (rewards) received will be taxed at flat 30%
 - **Cost of acquisition for crypto mining is considered Zero** for computing gains at the time of sale. No expense (electricity/infra cost etc) can be included.
4. Disclosure of Crypto Assets:
 - Ministry of Corporate Affairs has made it mandatory to disclose gains & losses in virtual currencies & value of cryptocurrency as on the balance sheet date.
 - In the ITR, the taxpayer transferring the VDA needs to select whether the income is from Business or Capital Gains in Schedule VDA depending on the nature of holding. Effectively, the taxable income will be reflected in Schedule BP or Schedule CG as the case may be, directly linked with Schedule VDA.
 - In case of gift, enter the amount on which tax is paid if any or in case of any other, cost to the previous owner under cost of acquisition. *[Reference:Section 56(2)(x)]*
 - If VDA is held as stock-in trade then it will be considered as business income or else capital gains if held as investment.

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