

DECIPHERING TAXABILITY OF CRYPTOCURRENCIES IN GST

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PROPOSAL BY CEIB

Bitcoin- 'A currency without government'

Ever since Indian Government mulls crack down on cryptocurrency market, digital currencies such as Bitcoin, Ethereum, Monroe and many more have found themselves under controversies in India. "Taxation on Cryptocurrencies" trended all over the platforms immediately after taxmen issued several notices to the individuals over huge tax gains. Top Bitcoin Exchanges such as Unocoin, Zebpay, Btcx-India and CoinSecure even approached the Authority for Advance Ruling (AAR) for better clarity on there transactions and existence in India.

In order to understand the controversies over these virtual currencies it is pertinent to understand the meaning and history of such decentralised cryptocurrency.

What are Cryptocurrencies?

*A **cryptocurrency**, can be broadly defined¹ as a digital asset designed to work as a medium of exchange wherein individual coin ownership records are stored in a ledger existing in a form of a computerized database using strong cryptography to secure transaction records, to control the creation of additional*

¹ Wikipedia

coins, and to verify the transfer of coin ownership. It typically does not exist in physical form (like paper money) and is typically not issued by a central authority.

Bitcoin has been one such type of cryptocurrency that has been based on “blockchain,” the record-keeping technology behind the Bitcoin network.

What is Blockchain Technology?

Blockchain technology is a structure that stores transactional records, also known as the block, of the public in several databases, known as the “chain,” in a network connected through peer-to-peer nodes. Typically, this storage is referred to as a ‘digital ledger.’

Every transaction in this ledger is authorized by the digital signature of the owner, which authenticates the transaction and safeguards it from tampering. Hence, the information the digital ledger contains is highly secure.

In simpler words, the digital ledger is like a Google spreadsheet shared among numerous computers in a network, in which, the transactional records are stored based on actual purchases. The fascinating angle is that anybody can see the data, but they can’t corrupt it.

In August 2014, United Kingdom announced bitcoin as first decentralised cryptocurrency. Since then, some countries recognized cryptocurrencies as legal tender, however, some countries without explicitly declaring as legal or illegal placed a banking ban on such transactions. Reserve Bank of India in April 2018, placed a ban on banks from dealing with organizations related to cryptocurrencies. The government too has issued periodic warnings of doing business on virtual currencies.

Thus, even if Cryptocurrencies existed for more than decade now, in India it is a term which is still not understood by masses, in such a scenario the dilemma whether transaction in such currencies are taxable under Goods and Services Tax (hereinafter referred as GST) regime is quite obvious.

Thus, to understand the taxability of these transactions it is pertinent to understand the leviability of GST.

Whether GST can be levied on Cryptocurrencies?

In pursuance to the provisions² of Central Goods & Services Tax Act 2017, GST shall be levied on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. Thus, it is amply clear that unless there is supply of ‘Goods’ or ‘Services’, GST on the same would not be applicable. Therefore, to bring under the purview of GST it is important to classify cryptocurrencies as goods/services.

The term Goods has been defined³ under the GST law as every kind of movable property other than money and securities but includes actionable claims, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

² Section 9 of CGST Act 2017

³ Section 2(52) of CGST Act 2017

The term Money has been defined⁴ as the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value.

From the above definitions it can be perused that any foreign currency will be deemed as money under the CGST Act. Thus, it becomes essential to understand that whether Bitcoin is foreign Currency or not. As the term '*foreign currency*' is not defined under CGST Act, thus the meaning of the same is to be verified under any other law for the time being in force or in common parlance.

In accordance with the provisions⁵ of FEMA Act, "foreign currency" means any currency other than Indian currency.

Therefore, it can be concluded from above definition that bitcoin can be treated as foreign currency only if bitcoin is covered under the ambit of the term '*currency*'

The term 'Currency' has been defined in Section 2(h) of the FEMA as follows:

"Currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers' cheques, letters of credit, bills of exchange and promissory notes, credit cards or other similar instruments, as may be notified by the Reserve Bank;

Hence, for any instrument to be considered as currency it is essential that the same has to be notified by Reserve Bank of India (RBI). Thus, as bitcoins are not recognised by RBI in India, therefore the same cannot be considered as currency.

Further the term 'Services' means⁶ anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged.

From the above, it can be concluded that if cryptocurrencies can cognate to goods than the same can akin to services as well and hence, GST can be levied on supply of such cryptocurrencies.

Classification of Cryptocurrencies in GST

As we all understand cryptocurrency as intangible asset. However, till date there is no clarity by Government whether same is classifiable as goods or services. Thus, if cryptocurrencies are to be considered as goods, then at present since there is no such classification in the Notification No. 1/2017-CT(Rate) dated 28th June 2017 perse. Thus, in absence of specification the same would be classifiable at **18%** as per entry no. 453 of Schedule III of Notification.

⁴ Section 2(75) of CGST Act 2017

⁵ Section 2(m) of FEMA Act 1999

⁶ Section 2(102) of CGST Act 2017

The entry reads as under: -

S. No.	Chapter / Heading / Subheading / Tariff item	Description of Goods
(1)	(2)	(3)
453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI

However, if the same are to be treated as services, then in the absence of clarification by government the same can be classifiable under the Heading 9997 'Other Services', taxable @ 18% as per Notification 11/2017-CT(Rate) dated 28th June 2017.

Key points of the proposal made to the GST Council

As, The Central Economic Intelligence Bureau (CEIB), proposed to impose 18% GST on Bitcoin transactions it is important to consider the proposal made by CEIB. The proposals made to Central Board of Indirect Taxes (CBIC) are as follows: -

- I. Bitcoin be categorized as an 'intangible asset' by which GST could be imposed on all the transactions. It was also suggested that cryptocurrency could be treated as current assets and GST be charged on the margins made when traded.
- II. Cryptocurrency 'mining' will be treated as a supply of service since it generates cryptocurrency and involves rewards and transaction fees. Tax will be collected from the miner on transaction fees or reward. If the value of the reward exceeds ₹ 20 lakh, individual miners will need to register themselves under the Goods and Services Tax (GST).
- III. Buying and selling of crypto currencies will be considered under the category of supply of goods. Other related facilitating transactions will be counted under services and these would include supply, transfer, storage, accounting, among others.
- IV. The transaction value in rupees or the equivalent of any freely convertible foreign currency will be used to determine the value of cryptocurrency.
- V. In scenario where both buyer and seller are in India, a transaction would be treated, as a supply of software and the buyer's location will be the place of supply.
- VI. For transfer and sale, the location of the registered person will be the place of supply. However, in a scenario where sale has to be made to non-registered persons, the location of the supplier would be considered as the place of supply.

- VII. Integrated GST would be applicable for transactions conducted beyond the Indian territory and would be considered as import or export of goods. IGST will be levied on cross-border supplies.

Conclusion

As the fate of cryptocurrencies in India is misty and till date no regulations have been made by the Government, therefore there is sincere need on part of government to not only prepare norms for cryptocurrencies but also clarifies its taxation position under Direct as well as Indirect Tax regime in India so that a mechanism of their taxation can be fixed for valuation and amount involved in such currencies can be taxed properly.

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The contents of this document are solely for informational purpose. It does not constitute professional advice or a formal recommendation. It is suggested to go through original statute / notification / circular / pronouncements before relying on the matter given. Professional advice recommended to be sought before any action or refrainment.