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INDIA

Taxation of Virtual Digital Asset in India

Introduction

Virtual Digital Assets are gaining popularity and the volume of trading in such digital assets is increasing substantially. Further, a market is emerging where payment for the transfer of a virtual digital asset can be made through another such asset.

Accordingly in the Finance Act 2022 the Government of India has inserted various provisions in the Income Tax Act to regulate investments in cryptocurrencies, Non Fungible Tokens or other virtual digital assets. Thus, any transfer of a virtual digital assets on or after 01-04-2022 shall be taxable.

Virtual Digital Asset [Section 2(47A)]

A new clause (47A) has been inserted in Section 2 to define Virtual Digital Asset.
It means:

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. Non fungible tokens and any other token of similar nature are also included in the definition.
c. Any other digital asset, as the Central Government may, by notification in the Official Gazette specify.

In simple words, the virtual digital asset shall mean a cryptocurrency, NFT or another virtual digital asset as notified by the Central Government.

From the above it can be seen that the definition of VDA inserted in Income Tax Act does not only include cryptocurrency but also include NFT and any other digital asset.

Taxation of VDA [Section 115BBH]

- **Transfer of virtual digital assets shall be taxable at the flat rate of 30%**
- **No deduction to be allowed for any expenditure or allowance**

Section 115BBH provides that 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 this Act in computing the income referred to in said section.

In other words, while computing the taxable income from transfer of Virtual Digital Assets except the cost of acquisition, no other deduction or exemption shall be allowed.

- **No set-off and carry forward allowed to losses from virtual digital assets**

Section 115BBH(2)(b) provides that no set-off of loss from the transfer of the virtual digital asset computed shall be allowed against income computed under any other provision of this Act to the assessee, and such loss shall not be allowed to be carried forward to succeeding assessment years.

Compiled by Deepak on 5 December 2022
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AUSTRALIA

October 2022 Australian Budget

On 25 October 2022, the Australian Federal Budget was delivered by Treasurer, Jim Chalmers. The budget while highly anticipated as an opportunity for the recently elected Labor Government to implement tax reform but was seen as many as falling short of expectations by focusing on integrity measures without delivering on tax reform.

This was Australia's second Federal Budget for 2022-23. The former Government handed down its budget on 29 March but had little time to enact any of the announced measures so the budget became more of an election platform. To some extent, this affected Labor's ability to deal with the difficult issues in its first budget due to promises made during the election to retain tax concessions that many argued should be repealed.

Tax and Superannuation Measures Announced

- **Intangible assets depreciation:**
  The previously announced option to self-assess effective life for certain intangible assets will not proceed.
- **Abandoned Business Tax measures:**
  The 2013-14 MYEFO measure that proposed to amend the debt/equity tax rules.
  The 2016-17 Budget measure that proposed changes to the taxation of financial arrangements (TOFA) rules.
  The 2016-17 Budget measure that proposed changes to the taxation of asset-backed financing arrangements.
  The 2016-17 Budget measure that proposed introducing a new tax and regulatory framework for limited partnership collective investment vehicles.
  The proposal to impose a $10,000 limit on cash payments to businesses has been abandoned.
- **Deferred Business Tax measures:**
  Proposed amendments to the Taxation of Financial Arrangements (TOFA) that were to come into force on 1 July 2022 have been deferred to a date yet to be determined.
  Third part reporting of ride share and short term accommodation transactions has been deferred from 1 July 2022 to 1 July 2023 and reporting of all other asset sharing, food delivery and task based services has been deferred from 1 July 2023 to 1 July 2024.
- **Digital currencies not a foreign currency:**
  The government will introduce legislation to clarify that digital currencies (such as Bitcoin) will continue to be excluded from the Australian income tax treatment of foreign currency.
- **Off-market share buy-backs** – the tax treatment of off-market share buy-backs undertaken by listed public companies will be aligned with the treatment of on-market share buy-backs.
- **COVID grants** – a number of State and Territory COVID-19 grant programs will be treated as non-assessable, non-exempt income.
- **Penalties** – the Commonwealth penalty unit will increase from $222 to $275 from 1 January 2023.
- **Residency changes for self-managed superannuation funds** – proposals to extend the central management and control test safe harbour from from 2 to 5 years and to remove the active member test,

will start from the tax year commencing on or after Royal assent rather than 1 July 2022.

- **Personal tax rates** – the personal tax cuts legislated by the previous government due to commence from 1 July 2024 were not repealed as many had expected. From 1 July 2024, foreign residents will 30% on the first $200,000 of income and 45% thereafter.

From 1 July 2024		
Taxable income	**Rate**	**Tax payable**
$0 – $18,200	0%	Nil (Residents Only) Non-Residents pay 30% from $0 - $200,000
$18,201 – $45,000	19%	+ 19% of excess over $18,200 (Residents Only) Non-Residents pay 30% from $0 - $200,000
$45,001 – $200,000	30%	+ 30% of excess over $45,000
$200,000+	45%	+ 45% of excess over $200,000

Integrity Measures

Thin Capitalisation

From 1 July 2023, the allowable interest deductions of Australian entities on cross border investments will be changed to replace the existing safe harbour and worldwide gearing tests with earnings-based tests to limit debt deductions in line with an entity's profits. The thin capitalisation rules will be amended to:

- replace the safe harbour test with a new earnings-based test which under which an entity's debt-related deductions will be limited to 30% of profits (using EBITDA as the measure of profit);
- allow deductions denied under the EBITDA test to be carried forward and claimed in a subsequent income year (up to 15 years);
- replace the existing worldwide gearing test and allow an entity in a group to claim debt deductions up to the level of the worldwide group's net interest expense as a share of earnings (which may exceed the 30% EBITDA ratio).

The existing thin capitalisation rules provided that an entity's allowable debt (interest) deductions are limited by the following statutory tests to the greater of:

- the safe harbour debt amount (60% of the average value of the entity's Australian assets);
- the arm's length debt amount; or
- the worldwide gearing debt amount which allows the entity to gear its Australian operations up to 100% of the actual gearing of its worldwide group.

The arm's length debt test will only apply to an entity's external (third party) debt and it is anticipated that this test may be strengthened to prevent entities from entering into arrangements that may provide greater deductions than would be claimable using the earnings-based test. These changes will apply to multinational entities operating in Australia and any inward or outward investor.

Payments for Intangibles

Legislation is to be enacted to prevent significant global entities (revenue of $1 billion or more) from claiming deductions from 1 July 2023 for payments to related parties in connection with intangibles held in jurisdictions with:

- a tax rate below 15%; or
- a tax preferential patent box regime without sufficient economic substance.

New Reporting Requirements

A number of new reporting requirements will apply from 1 July 2023.

- Significant global entities must publicly release tax information on a country by country (CbC) basis and a statement on their approach to taxation. This statement will be published by the Australian Taxation Office.
- Australian public companies (listed and unlisted) must disclose information on the number of subsidiaries and their country of tax domicile; and
- Tenderers for Australian government contracts worth more than $200,000 must disclose their country of tax domicile (by supplying their ultimate head entity's country of tax residence).

Tax Residency – An Update

The 2020-21 Federal budget proposed the introduction of reforms to the determination of tax residency. It was proposed to introduce a primary "bright line" test which the current residency tests lack. Under the pending reforms, a person who is physically present in Australia for 183 days or more in any income year will be an Australian tax resident; and for individuals who do not meet the primary test there are to be a series of secondary tests that depend on a combination of physical presence and measurable, objective criteria.

While these reforms remain pending, the Australian Taxation Office has released a draft taxation ruling TR 2022/D2 for public comment. The draft ruling consolidates previous rulings and sets out 4 residency tests:

- Ordinary concepts test - The ordinary concepts test is asking whether your presence in Australia is usual and settled in contrast to temporary and casual.
- Domicile test - Domicile considers whether there is a legal relationship between a person and Australia. There are 3 types of 'domicile':

a. A 'domicile of origin', which is attributed to each individual at birth.
b. A 'domicile of dependence', which is relevant where a person (such as a minor) lacks capacity to acquire their own domicile and their domicile is determined by reference to someone else's domicile (such as a parent's).
c. A 'domicile of choice', which is the domicile a person acquires voluntarily.

- 183-day test - you are a resident if you have been present in Australia for 183 days or more in an income year, unless the Commissioner is satisfied that both your usual place of abode is

overseas, and you do not have an intention to take up residency in Australia.

- Commonwealth superannuation fund test – you are a resident if you are a member of certain superannuation funds.

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