

ERGO

Analysing developments impacting business

CBDT CLARIFIES THE SCOPE OF VDAS: LOYALTY POINTS, NFTS ETC.

1 July 2022

The Finance Act, 2022 amended the Income-tax Act, 1961 (IT Act) by introducing a new taxation regime in relation to Virtual Digital Assets (VDAs) wherein: (i) a 30% tax has been levied on income from transfer of VDAs in the hands of the transferor; (ii) receipt of VDAs for nil or inadequate consideration has been made taxable in the hands of the recipient; and (iii) an obligation has been imposed (under Section 194S of the IT Act) on the persons responsible for paying any consideration to 'Indian residents' for transfer of VDAs to deduct tax at source (TDS) at 1% (with effect from 1 July 2022). Our *Ergo* on budget 2022 proposals can be accessed [here](#).

VDA has been defined to mean: (i) 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 (1stLimb); (ii) notified non-fungible tokens (NFTs); (iii) any other digital asset as may be notified by the Central Government. Further, the Central Government has also been empowered to exclude any digital assets from the ambit of VDA by way of a notification.

Due to the broad language of the 1st Limb of the VDA definition, there were some concerns as to whether digital gift cards, loyalty points, etc. will also inadvertently fall within the ambit of VDAs, and hence be subjected to the VDA taxation regime. Further, since only notified NFTs are to be covered within the scope of the VDA definition, stakeholders were awaiting announcement from the Central Government. In this regard, the Central Government has issued two notifications dated 30 June 2022, namely notification numbers 74 and 75 of 2022 to clarify the scope of VDAs (Notifications). Key aspects of the same are summarized as under:

- Re gift cards, mileage points, etc.

Following assets have been excluded from the scope of VDAs:

- 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 cards, 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 applications.
- Re NFTs

With respect to NFTs, it has been specified that a token which qualifies to be a VDA will be regarded as a NFT for the purpose of the VDA definition but shall not include a NFT whose transfer results in transfer of ownership of underlying tangible assets and the transfer of ownership of such underlying tangible assets is legally enforceable (Tangible Asset Related NFTs).

Comments

Recently, some aspects in relation to the implementation of TDS mechanism for VDA transactions undertaken on exchange (our Ergo can be accessed [here](#)) and peer to peer basis (our Ergo can be accessed [here](#)) were also clarified. The Notifications are a welcome step as they clear the ambiguities surrounding the scope of the VDA definition and cover NFTs, especially since the new 1% TDS obligation has come into effect from 1 July 2022. Having said this, the manner in which NFT has been notified for the purpose of VDA implies that except Tangible Asset Related NFTs, all other NFTs (subject to them otherwise falling within the scope of a VDA) will be subject to the newly introduced VDA taxation regime.

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