

CRYPTO CURRENCY / VIRTUAL DIGITAL ASSETS: INDIRECT TAX CHALLENGES AND THE NEED FOR CLARITY

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Abstract

The rapid emergence of crypto currencies and other Virtual Digital Assets (VDAs) has fundamentally altered traditional concepts of money, property, and economic exchange. While India has taken significant steps toward regulating VDAs through the Income Tax Act, 1961, particularly by introducing Section 115BBH and Section 194S, the indirect tax treatment of crypto currencies remains ambiguous and fragmented. The Goods and Services Tax (GST) framework, which governs indirect taxation in India, was not originally designed to accommodate decentralised digital assets operating without intermediaries or clear territorial presence. As a result, several interpretational challenges arise concerning the classification of crypt currencies, determination of taxable events, valuation, place of supply, and the identity of the taxable person.

This paper critically examines the indirect tax implications of crypto currency transactions under the Indian GST regime. It analyses whether crypt currencies should be treated as goods, services, securities, or actionable claims, and evaluates the consequences of each classification. The study further explores GST liability in activities such as crypto trading, mining, staking, exchange services, and cross-border transactions. By drawing comparisons with international approaches adopted by jurisdictions such as the European Union, Australia, and Singapore, the paper highlights the regulatory gaps in India's indirect tax framework.

The paper argues that the absence of explicit legislative guidance has resulted in uncertainty for taxpayers, enforcement challenges for tax authorities, and increased litigation risk. It emphasises the urgent need for a clear, comprehensive, and technology-neutral indirect tax policy that balances revenue considerations with innovation and compliance ease. The study concludes with recommendations for statutory clarification, administrative guidelines, and harmonisation between direct and indirect tax regimes to ensure certainty, transparency, and sustainable growth of the digital economy in India.

Keywords: *Crypto currency, Virtual Digital Assets, GST, Indirect Taxation, Digital Economy, Tax Classification, India*

1. Introduction

The digital economy has witnessed unprecedented transformation with the advent of crypt currencies and block chain-based assets. Crypt currencies such as Bitcoin, Ethereum, and various other tokens operate on decentralised ledger technologies that enable

peer-to-peer transactions without reliance on traditional financial intermediaries. These assets challenge conventional legal and tax frameworks, which are largely built around identifiable issuers, intermediaries, and territorial jurisdiction.

In India, crypt currencies are collectively recognised as Virtual Digital Assets (VDAs) for the purposes of direct taxation. However, indirect taxation, particularly under the Goods and Services Tax (GST) regime, remains unclear. GST law depends heavily on the classification of transactions as involving goods or services, the identification of suppliers and recipients, and the determination of place of supply. Crypto currencies, due to their decentralised and intangible nature, do not easily fit into these categories.

This lack of clarity has resulted in compliance difficulties for crypto exchanges, investors, miners, and service providers. Moreover, inconsistent interpretations by authorities risk undermining the certainty and predictability that are essential for a stable tax system. As India aspires to become a global digital economy, addressing indirect tax challenges relating to VDAs becomes imperative.

2. Understanding Crypto currency and Virtual Digital Assets

Crypto currency is a form of digital asset that uses cryptographic techniques to secure transactions and control the creation of new units. Unlike fiat currency, crypt currencies are not issued by any central authority and operate on decentralised block chain networks. Virtual Digital Assets is a broader term encompassing crypt currencies, non-fungible tokens (NFTs), and other block chain-based digital representations of value.¹⁰³

The defining features of VDAs include decentralisation, pseudonymity, borderless transactions, and programmability through smart contracts. These characteristics blur traditional distinctions between currency, commodity, and digital service, making their treatment under indirect tax laws complex.¹⁰⁴

3. Overview of India's Indirect Tax Framework

3.1 Evolution of Indirect Taxation in India

- India's indirect tax system transitioned from a fragmented structure to a unified regime with the introduction of GST in 2017.¹⁰⁵
- Multiple indirect taxes such as excise duty, service tax, VAT, and entry tax were subsumed to reduce cascading and compliance complexity.¹⁰⁶
- The objective was to create a common national market based on the principle of "One Nation, One Tax."¹⁰⁷

3.2 Constitutional Basis of GST

- GST derives constitutional validity from the Constitution (101st Amendment) Act, 2016.¹⁰⁸
- Article 246A empowers both the Centre and States to levy GST.¹⁰⁹
- The GST Council functions as a federal decision-making body to ensure uniformity in tax policy.¹¹⁰

3.3 Legislative Structure of GST Laws

- Central GST Act, 2017¹¹¹
- Integrated GST Act, 2017¹¹²
- State GST Acts
- Union Territory GST Act, 2017¹¹³

These statutes collectively govern levy, collection, and administration of GST.

3.4 Concept of "Supply" under GST

- GST is levied on the "supply" of goods or services or both.
- Supply includes sale, transfer, barter, exchange, licence, lease, or disposal.
- Crypto currency transactions often involve barter or exchange, raising

¹⁰³ Satoshi Nakamoto, Bitcoin: A Peer-to-Peer Electronic Cash System 1–3 (2008), <https://bitcoin.org/bitcoin.pdf>

¹⁰⁴ European Commission, Blockchain and Distributed Ledger Technologies (2021), <https://digital-strategy.ec.europa.eu>

¹⁰⁵ Constitution (One Hundred and First Amendment) Act, 2016, §§ 12–19, Gazette of India, Aug. 8, 2016 (India)

¹⁰⁶ Goods and Services Tax Council, Concept Note on Goods and Services Tax 3–6 (2016); Central Board of Indirect Taxes & Customs (CBIC), Overview of GST (2017)

¹⁰⁷ Ministry of Finance, Government of India, Goods and Services Tax: One Nation, One Tax (Press Information Bureau, July 1, 2017)

¹⁰⁸ Constitution (One Hundred and First Amendment) Act, 2016, Gazette of India, Aug. 8, 2016 (India)

¹⁰⁹ INDIA CONST. art. 246A

¹¹⁰ INDIA CONST. art. 246A

¹¹¹ Central GST Act, 2017

¹¹² Integrated GST Act, 2017

¹¹³ Union Territory GST Act, 2017

questions about their inclusion under this definition.

3.5 Classification of Goods and Services

- **Goods:** Movable property other than money and securities.
- **Services:** Anything other than goods, money, and securities.

Crypto currencies are not legal tender and are not expressly classified as securities, creating ambiguity in classification.

4. Classification Challenges under GST

4.1 Crypto currency as Goods

If crypt currencies are classified as goods, they would fall within the definition of “every kind of movable property other than money and securities.” Since crypt currencies are not recognised as legal tender in India, they may qualify as movable property¹¹⁴. This approach could subject crypto currency trading to GST on the value of the tokens exchanged.

However, treating crypt currencies as goods raises practical difficulties, including valuation volatility and tracking peer-to-peer transactions without intermediaries.¹¹⁵

4.2 Crypto currency as Services

An alternative view is that crypto currency transactions constitute a supply of services, particularly where exchanges facilitate trading. In this case, GST would apply to service fees or commissions charged by exchanges rather than the value of the crypto currency itself. This approach aligns with international practices and reduces the risk of double taxation.¹¹⁶

4.3 Crypto currency as Securities or Actionable Claims

If crypt currencies are treated as securities or actionable claims, they may fall outside the scope of GST. However, current Indian law does

not classify crypt currencies as securities, and their speculative nature complicates this interpretation.

5. GST Implications of Specific Crypto currency Activities

5.1 Trading and Exchange Services

Crypto exchanges act as intermediaries by providing platforms for buying and selling VDAs. GST liability may arise on transaction fees charged by exchanges. The key issue is whether the underlying crypto trade itself is taxable or only the service component.¹¹⁷

5.2 Mining and Validation Activities

Crypto currency mining involves validating transactions and maintaining block chain networks.¹¹⁸ Miners are rewarded with newly created tokens. The absence of a clear recipient and consideration makes it difficult to classify mining as a taxable supply under GST.

5.3 Staking and Yield Generation

Staking involves locking tokens to support network operations in exchange for rewards. Whether staking constitutes a supply of services or merely a capital activity remains uncertain, creating ambiguity in GST applicability.¹¹⁹

5.4 Cross-Border Transactions

Crypto currency transactions often involve cross-border elements, raising issues of place of supply and export of services. Determining jurisdiction becomes particularly challenging when parties are anonymous or decentralised.

6. International Approaches to Indirect Taxation of Crypto currencies

The global nature of crypto currencies has compelled several jurisdictions to clarify their indirect tax treatment in order to reduce uncertainty and ensure regulatory consistency. While approaches vary, most countries

¹¹⁴ Reserve Bank of India, Statement on Developmental and Regulatory Policies (Feb. 7, 2018)

¹¹⁵ Organisation for Economic Co-operation and Development (OECD), Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues 18–22 (2020)

¹¹⁶ Organisation for Economic Co-operation and Development (OECD), Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues 25–28 (2020)

¹¹⁷ Organisation for Economic Co-operation and Development (OECD), Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues 25–30 (2020)

¹¹⁸ Satoshi Nakamoto, Bitcoin: A Peer-to-Peer Electronic Cash System 2–4 (2008), <https://bitcoin.org/bitcoin.pdf>

¹¹⁹ Central Board of Indirect Taxes & Customs (CBIC), GST Implications on Cryptocurrency Transactions (Internal Policy Discussion Paper, 2021)

recognise that taxing the underlying crypto currency as a commodity or currency may lead to double taxation and hinder innovation. Consequently, international practices largely focus on taxing intermediary services rather than the digital assets themselves.

6.1 European Union

The European Union has adopted a relatively progressive and uniform approach toward the indirect taxation of crypto currencies. The Court of Justice of the European Union (CJEU) held that the exchange of crypto currencies for fiat currency constitutes a supply of services but is exempt from Value Added Tax (VAT), treating crypto currencies as a means of payment rather than goods.¹²⁰

This exemption aims to prevent double taxation and align crypto currency transactions with traditional currency exchange services. However, VAT may still apply to ancillary services such as exchange platform fees, wallet services, and advisory services related to crypto currencies.

6.2 United Kingdom

The United Kingdom follows a VAT-neutral approach toward crypto currencies. HM Revenue & Customs (HMRC) does not treat crypto currencies as money or legal tender but exempts crypto exchange activities from VAT. VAT is not charged on the value of crypto currencies exchanged, but applies to service fees charged by exchanges and intermediaries.

The UK model emphasises functional equivalence, recognising crypto currencies as a medium of exchange for indirect tax purposes while maintaining regulatory oversight.¹²¹

6.3 Australia

Australia initially subjected crypto currency transactions to Goods and Services Tax, treating crypto currencies as barter transactions. This resulted in double taxation once on the

purchase of crypto currency and again when used for transactions. Recognising the adverse impact, Australia reformed its GST law in 2017 to classify digital currencies as money for GST purposes.

As a result, the supply of crypto currency itself is exempt from GST, while exchange services and commissions remain taxable. This reform significantly improved certainty and industry growth.¹²²

6.4 Singapore

Singapore adopts one of the most crypto-friendly indirect tax regimes. Under its Goods and Services Tax framework, “Digital Payment Tokens” are exempt from GST when used as a medium of exchange. This approach treats crypto currencies similarly to money for consumption tax purposes.¹²³

However, GST applies to services related to crypto currencies, such as exchange operations, brokerage services, and digital wallet services. Singapore’s model balances tax neutrality with regulatory clarity.¹²⁴

7. Regulatory and Administrative Challenges

The lack of statutory clarity in India has led to uncertainty for taxpayers and enforcement difficulties for authorities. Divergent interpretations increase the risk of litigation and discourage innovation. Moreover, inconsistent treatment between direct and indirect tax regimes undermines the coherence of the tax system.

8. Need for Clarity and Policy Reform

A clear legislative framework is essential to address indirect tax challenges relating to VDAs. This includes explicit classification of crypto currencies, defined taxable events, valuation mechanisms, and place of supply rules. Harmonisation between GST and income tax

¹²⁰ European Commission, VAT Treatment of Bitcoin and Other Cryptocurrencies (2015)

¹²¹ HM Revenue & Customs, VAT Treatment of Bitcoin and Other Cryptocurrencies (Brief 9/2014)

¹²² Organisation for Economic Co-operation and Development (OECD), Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues 29–31 (2020)

¹²³ Inland Revenue Authority of Singapore (IRAS), e-Tax Guide: Digital Payment Tokens 2.3–2.5 (2020)

¹²⁴ Monetary Authority of Singapore, Payment Services Act 2019: Regulatory Approach (2019)

provisions is also necessary to ensure consistency and fairness.

9. Recommendations

- Introduce explicit GST provisions addressing VDAs
- Clarify classification through statutory amendments or notifications
- Tax only intermediary services rather than underlying crypto assets
- Issue comprehensive administrative guidelines
- Align indirect tax policy with international best practices

10. Conclusion

Crypto currencies and Virtual Digital Assets represent a paradigm shift in economic exchange, challenging traditional tax frameworks. While India has taken steps to regulate VDAs under direct tax law, indirect tax treatment remains uncertain. The absence of clarity under GST creates compliance challenges, enforcement difficulties, and policy inconsistency. A clear, balanced, and forward-looking indirect tax framework is essential to ensure certainty, promote innovation, and safeguard revenue interests. Addressing these challenges will be crucial for integrating the digital economy into India's formal tax system and achieving long-term regulatory stability.

Furthermore, the continued ambiguity surrounding the indirect taxation of crypto currencies risks increasing litigation and interpretational conflicts between taxpayers and tax authorities. In the absence of explicit statutory provisions or authoritative GST Council guidance, tax officers may adopt divergent approaches, leading to inconsistent assessments across jurisdictions. Such uncertainty undermines the principles of certainty and predictability, which are fundamental to an efficient tax system. It also places an undue compliance burden on legitimate businesses, particularly start-ups and technology-driven enterprises operating in the block chain ecosystem, potentially

discouraging voluntary compliance and formalisation.

Additionally, a well-defined indirect tax policy for Virtual Digital Assets must be aligned with India's broader regulatory and economic objectives. As India positions itself as a global hub for digital innovation and fintech development, the tax framework must balance revenue mobilisation with the need to foster innovation and competitiveness. A technology-neutral, service-oriented GST approach focusing on intermediary and facilitation services rather than the underlying digital assets would align India with international best practices while minimising the risk of double taxation. Such a calibrated framework would not only enhance regulatory clarity but also contribute to the sustainable integration of emerging digital technologies into India's formal economic and fiscal architecture.

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