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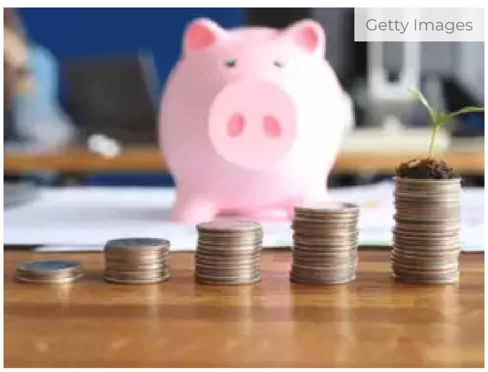
New remittance rules put wealthy Indians in a fix

By Sugata Ghosh, ET Bureau Last Updated: Apr 24, 2023, 06:14 AM IST

Synopsis
The new rule restrains them from keeping money beyond six months in offshore bank accounts. The rule requires them to 'invest' the unused money remitted from India in foreign securities, mutual funds, properties and other permitted assets.



Under the LRS framework, an Indian resident can retain and reinvest the income earned from his investments made under the scheme. However, the unused foreign exchange - unless reinvested - must be repatriated back to India within 180 days from the date of such receipt.

Mumbai: Affluent Indians, who have been legitimately parking a slice of their wealth outside the country for a decade, are in a catch-22 situation.

These rich residents, who spread their money across currencies and markets, are now unsure how to diversify their savings, with the Reserve Bank of India (RBI) yet to spell out whether they can hold fixed deposits (FDs) with overseas banks.

A new rule restrains them from keeping money beyond six months in offshore bank accounts. The rule requires them to 'invest' the unused money remitted from India in foreign securities, mutual funds, properties and other permitted assets.

Most interpret that 'FDs' are not included as permitted investments under the revised [Liberalised Remittance Scheme](#) ([LRS](#)) which allows a resident Indian to transfer $250,000 a year abroad to invest or lend.

Question of Unlisted Debt

"This leaves certain unanswered questions. An Indian resident is allowed to maintain a foreign bank account for investment or realisation purposes. Typically, a foreign bank will have a requirement of maintenance of minimum balance but the new LRS framework does not provide flexibility to retain excess funds in the bank account beyond a period of 180 days. So, how does one maintain a minimum balance and have an account with the bank?" said Parul Jain, co-head, international tax practice at law firm Nishith Desai Associates.

Under the LRS framework, an Indian resident can retain and reinvest the income earned from his investments made under the scheme. However, the unused foreign exchange - unless reinvested - must be repatriated back to India within 180 days from the date of such receipt.

"Also, based on a literal reading, even foreign FDs may not be permitted to be made since these would qualify as investments made into 'unlisted debt'. So, planning realisations and **remittances** back into India while dealing with a cycle of 180 days would be administratively cumbersome... RBI should provide flexibility to Indian residents to enable them to maintain such minimum balances in their foreign bank accounts," said Jain.

Lack of clarity

Besides senior tax and legal practitioners, large banks, on behalf of their clients, had approached the RBI for clarification. Many were taken aback when the FAQs released by RBI a fortnight ago did not clear the air.

Amid a widely shared perception that the **central bank** and the government are putting rules in place to discourage **overseas money transfers** by resident individuals, it is increasingly felt that the LRS has significantly changed since 2004 when it was introduced as a virtually 'no questions asked' window.

"The August 2022 amendments in the LRS scheme mark an about-turn in the RBI policy. It forces remitters to park unutilised funds in riskier assets to avoid violating the 180-day rule. As no threshold is prescribed, a close watch must be kept to ensure that even minimum funds do not lie idle beyond 180 days. It would have been helpful if RBI had in its recent LRS FAQs of April 2023 clarified that funds in bank FDs would be considered as 'utilisation' of funds," said Rutvik Sanghvi, partner at the CA firm Rashmin Sanghvi & Associates.

Curbing remittances?

Along with the change in LRS rules, the recent increase in the rate of tax collected at source (**TCS**) on LRS remittances seem to suggest that the authorities want to rein such transfers, said Sanghvi.

Some of the banks are alerting their wealthy clients that keeping funds lying in current accounts or FDs abroad would be a violation of the Foreign Exchange Management Act (**FEMA**). Indeed, even before the rules were changed last year, many Indians, some unwittingly, ended up on the wrong side of the complex law. "Foreign builders offer schemes where a person can get a completed house, but payment can be made over the next few years after completion. This is clearly a violation as the payment option over a few years is a loan," said chartered accountants Naresh Ajwani and Bhavya Gandhi in a recent paper on the subject.

LRS remittance must be from own funds - a person cannot borrow from a non-resident to invest. Also, a resident cannot transfer under LRS the money won in a lottery or gambling.

While the new regulations allow an individual to invest in unlisted shares of overseas companies (as long as the entity is not into financial services and subject to other conditions on control and ownership), investment is not allowed in unlisted debt instruments. Now, FDs will be out-of-bounds under LRS if they are construed as 'unlisted debt instruments'. MNC banks have also asked RBI whether their clients in India can invest in 'unregulated' funds incorporated in centres like Delaware and Singapore - regimes where the 'fund manager' is regulated instead of the fund.

NEXT STORY

Crypto tax planning for NRIs: Strategies to maximize tax savings

ET CONTRIBUTORS Last Updated: Apr 21, 2023, 01:53 PM IST

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Synopsis
When selling cryptocurrency, only the cost of acquisition can be deducted from the selling price to calculate gains. Other expenses like mining expenses cannot be deducted. Additionally, each virtual digital asset (VDA) is considered a separate asset class so losses from one cannot be used to offset gains from another. Special tax rates of 30% apply to gains from VDA, and a basic exemption limit is not applicable.

Archit Gupta
Founder and CEO, Clear, Contributor Content

From being a software engineer in Silicon Valley to helming one of the India's largest start-ups, Archit Gupta, Founder and CEO at ClearTax, has spearheaded a massive paradigm shift in the fin-tech sector through the use of technology. In 2011, he founded ClearTax, a company offering online e-filing and taxation solutions.

To understand or strategize the taxation of Cryptocurrency we need to understand the taxability of the Cryptocurrency (called Virtual Digital Assets from now on). Firstly, we need to understand how the gains from the transfer from VDA are computed.

While computing the gains from the sale of VDA, only the cost of acquisition i.e., the price paid to own the VDA shall have to be deducted from the selling price. Any other expenses like selling expenses, mining expenses are not deductible. Furthermore, infrastructure expenses for mining can also not be deducted to arrive at the gains from sale of VDA.

Furthermore, each VDA is to be considered as a separate asset class. So, loss on transaction of a particular VDA cannot be used to set off the gains out of transaction of another VDA. For example, if a person has gains of Rs 2,00,000 arising out of transfer of Bitcoin and loss of Rs 1,00,000 out of transfer of Ethereum, then he has to pay taxes on the gains of Rs 2,00,000 on Bitcoin. The loss of Ethereum will not be used to set off the gains of Bitcoin and if there are no gains out of transfer of Ethereum, the loss of Rs 1,00,000 will be exhausted.

On such gains, a special rate of tax under section 115 BBH shall be applicable.

The special rate of tax is 30%, which will then be increased by education cess and surcharge, if applicable. Also, since the tax rate is a special rate of tax, the benefit of the basic exemption limit shall not be applicable on it.

As the tax saving opportunity is very less for VDA the most viable option is to harvest the tax loss. Tax-loss harvesting starts with disposing off the VDA in a phased manner which has yielded gain, at a loss over the remainder of the period. For the price volatility of VDA has to be monitored constantly and whenever the price has gone down appropriate action can be taken to negate the gains on transfer of VDA.

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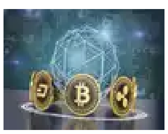

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APR 16, 2023

So the prudent approach for saving the taxes on VDA transfer would be to be very watchful and execute the trades at the right time.

It is to be noted that, the section which governs the taxability of VDAs i.e. Section 115 BBH, doesn't distinguish between tax resident and tax non residents, so the taxability shall be the same for both tax resident and tax non resident. However if the NRIs transfers VDAs in exchanges located outside India from the VDA wallet located outside India and the proceeds come in bank accounts located outside India, then such gains will not be taxable in India in the hands of the NRIs.

(Disclaimer: The opinions expressed in this column are that of the writer. The facts and opinions expressed here do not reflect the views of www.economictimes.com.)

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Foreign trip booking: Credit card users may soon have to pay 20% TCS on forex transactions

By Anulekha Ray, ET Online Last Updated: Apr 22, 2023, 10:48 AM IST

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Synopsis
If RBI brings credit card payments for overseas tour packages under LRS, then all the transactions done through credit cards are likely to attract TCS at 20 per cent. If you often use a credit card to book foreign tour packages, here are the key things that you need to keep in mind.

Bringing credit card transactions under the ambit of LRS will not be an easy task, said experts.

Starting from July 1, 2023, you will have to shell out more to book foreign tour packages. Budget 2023 has raised the tax collected at source (TCS) rate for foreign remittances under the Liberalised Remittance Scheme (LRS) from 5 per cent to 20 per cent. As a result, TCS on remittances for booking overseas travel packages will increase from the existing 5 per cent to 20 per cent. The Ministry of Finance has recently asked the Reserve Bank of India

(RBI) to look into the aspect of bringing credit card payments during foreign tours under the central bank's LRS to ensure that such expenses do not escape tax collected at source.

Why the finance ministry wants to bring credit card payments for foreign travel under LRS

While tabling Finance Bill in the Lok Sabha last month, Finance Minister Nirmala Sitharaman said, "It has been represented that payments for foreign tours through a credit card are not being captured under the Liberalised Remittance Scheme (LRS) and such payments escape tax collection at source (TCS)."

"The RBI is being requested to look into this to bring credit card payments for foreign tours within the ambit of LRS and tax collection at source thereon," she added.

What happens if credit card payments for forex transactions come under LRS

If RBI brings credit card payments for overseas tour packages under LRS, then all the transactions done through credit cards are likely to attract TCS at 20 per cent. Let us understand this with an example.

Also Read: New TCS rate from July: Sending money for children studying abroad to cost more for these expenses

For instance, suppose you want to book a family tour package to Thailand that costs Rs 2 lakh. Now, if you use your credit card to purchase the package, you will have to spend an additional Rs 40,000. Do remember, all other payment methods such as transferring money from one bank account to another or payments through debit cards for the overseas trip are already under LRS and this TCS of Rs 40,000 will be applicable there as well.

Including credit card payment for foreign tours under the umbrella of LRS will serve two main purposes — a) Uniform taxation on the purchase of foreign tours either from a local travel agent or an overseas travel agent, and b) Casting a wider tax net by ensuring that overseas remittances are tracked and reported, explained Neeraj Agarwala, Partner, Nangia Andersen India, leading business consultant firm.

Challenges ahead

Bringing credit card transactions under the ambit of LRS will not be an easy task, said experts. Some transactions for the purposes like education and medical expenses remain outside the purview of this higher 20 per cent TCS. The key question is to identify the transactions which would attract the levy of TCS and those transactions which do not, Ankit Jain, Partner, Ved Jain & Associates. It will be an arduous task for banks to keep track of each and every transaction.

"This is even more complicated since in some cases since the same merchant can have different types of transactions, few of which may attract a levy of TCS and some of them won't. With so many international merchants being involved, such categorisation would require changes in the credit card system itself," Jain said.

The banks will also have to build a system to capture this data and ensure compliance in a timely manner, said Neeraj Agarwala. They may have to rely entirely on the declarations of the credit card users, he added.

"Possibly this could only be done by a process wherein the holder of an international credit card, before making any payment, would be asked by a pop-up message on the nature of the transaction and when he does so, TCS would be automatically triggered," explained Vivek Jalan, Partner, Tax Connect Advisory, a multi-disciplinary tax consultancy firm.

"For instance, if a person with a credit limit of Rs 1.5 lakh makes an online payment for a foreign tour worth the same amount, would the bank withhold a part of the transaction while remitting the rest of the 80 per cent, allow additional credit to the consumer or disallow the transaction entirely?" said

Pallav Pradyumn Narang, Partner, CNK & Associates LLP, a Chartered Accountancy firm. It remains unclear as of now, he added.

At present, an individual can remit up to $250,000 per family member (including minors) in each financial year under the LRS scheme. Till now, credit card transactions were not under LRS. Now, it is yet to be known whether credit card transactions will come under the threshold or have their upper limit.

Credit card payments under LRS: What users must do now

Do remember that TCS is not a tax by itself. It is adjustable against a taxpayer's total income tax liability in a financial year. An upfront TCS of 20 per cent on tour packages will increase the cash outflow. If the user does not have an adequate tax liability to offset the TCS, he or she will have to file for a refund which could take several months, thus, severely impacting his or her cash flow, said Neeraj Agarwala. So, while making a budget for your next foreign trip, you must factor in this condition, experts advised.

If you often use a credit card to book foreign tour sightseeing or packages, here are the key things that you need to keep in mind.

Credit card users should keep all the necessary documentation, such as invoices, receipts, and bank statements, to prove that their foreign tour payments were made under LRS and comply with all the regulatory requirements, said Maneet Pal Singh, Partner, I.P. Pasricha & Co, a Chartered Accountancy firm.

"The users should ensure that they have received the certificate of tax collected at source from the bank so that taxes can be claimed against their tax liability," Shalini Jain, Partner, People Advisory Services, EY India, pointed out.

In case of an audit of tax returns, credit card users should be able to justify the sources of income which have been utilised for payment of foreign tours through the card, Jain said.

The information on the TCS deposited will be available in one's Form 26AS. The credit card user must ensure that the amount in Form 26AS reconciles with the credit card statement, experts advised. The credit card user should also verify the PAN that is updated in the bank's record so that they don't lose out on credit for the same, added Jain.

Further, card users need to be mindful of their credit card limit as they will need to keep a buffer of 20 per cent for TCS, Jain said. Otherwise, credit card users might have to pay extra for overspending on their credit cards.

Forex cards to also attract TCS

Do note that from October 1, 2020, international transactions through debit cards (including dynamic currency conversion transactions) and load/reload transactions on foreign travel cards by banks have been brought under the purview of LRS. So, if you use your forex card for booking foreign tours, it will also attract a TCS of 20 per cent.

(Originally published on Apr 19, 2023)

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NEXT STORY

Latest NRE FD rates 2023: SBI vs ICICI Bank Vs PNB vs HDFC Bank vs Canara Bank

By Sneha Kulkarni, ET Online Last Updated: Apr 19, 2023, 11:48 AM IST

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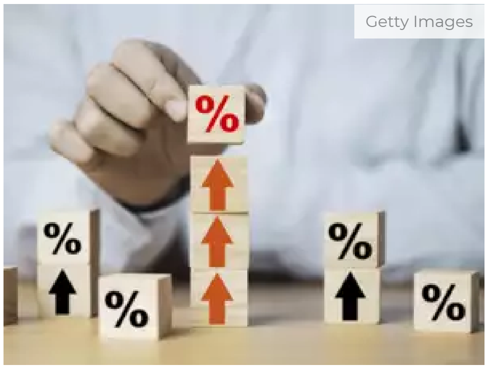
Synopsis

Money transferred to an NRE account is converted to Indian Rupees (INR). In other words, you can deposit money in any foreign currency, such US dollars, and withdraw it in Indian rupees.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When you put money into an NRE account, it is converted into Indian Rupees (INR). This means you can deposit money in any foreign currency, such as US dollars, and withdraw it in Indian rupee. Non-Indian Residents (NRI) can choose from various types of NRE Accounts. These include savings, current, recurring or fixed deposit accounts. NRE account can be opened either individually or jointly.

Interest rates offered on NRE fixed deposits vary with each bank and deposit amount. While, the minimum tenor starts from 1 year in most banks.

Here is a quick comparison of NRE fixed deposits 2023 of banks such as SBI, HDFC Bank, ICICI Bank, Canara Bank and PNB.

Also read: NRO savings account interest rate: SBI vs HDFC Bank vs ICICI Bank

SBI NRE fixed deposit interest rates
For amounts less than Rs 2 crore, SBI offers interest rates ranging from 6.50 percent to 7.10 percent for durations ranging from one year to ten years. The new rates are applicable from February 15, 2023.

Tenors	Below Rs.2 Crore	Rs.2 Crore & above
1 year to less than 2 years	6.80%	6.75%
400 Days (AMRIT KALASH)	7.10%	-
2 years to less than 3 years	7.00%	6.50%
3 years to less than 5 years	6.50%	6.00%
5 years to 10 years	6.50%	6.00%

HDFC Bank NRE fixed deposit interest rates

HDFC Bank offers interest rates in the range of 6.60 percent to 7.10 percent for amounts below Rs 2 crore to general citizens. The rates are effective from February 21, 2023. Note minimum tenor for NRE Deposit is 1 year.

Tenor	Regular citizens	Senior Citizens
1 year to < 15 months	6.60%	7.10%
15 months to < 18 months	7.10%	7.60%
18 months to < 21 months	7.00%	7.50%
21 months - 2 years	7.00%	7.50%
2 years 1 day - 3 years	7.00%	7.50%
3 year 1 day to - 5 years	7.00%	7.50%

5 year 1 day - 10 years	7.00%	7.75%*

ICICI Bank FD fixed deposit interest rates

ICICI Bank offers interest rate between 6.70% to 7.10% on tenures ranging from 1 years to 10 years. The new rates are effective from February 24, 2023. On premature withdrawal, after 1 year & above, interest rate charged is 1%.

Maturity Period	Less than INR 20.0 million
1 year to 389 days	6.70%
390 days to < 15 months	6.70%
15 months to < 18 months	7.10%
18 months upto 2 years	7.10%
2 years 1 day upto 3 years	7.00%
3 years 1 day upto 5 years	7.00%
5 years 1 day upto 10 years	6.90%

PNB NRE fixed deposit interest rates

Punjab National Bank offers NRE fixed deposit rates ranging from 6.30 percent to 7.25 percent. The term of office is one year and up to ten years. The rates are effective from January 1, 2023.

Period	Revised Wef. 01.01.2023	Revised Wef. 17.11.2022
1 year	6.75	6.75
above 1 year to 665 days	6.75	6.5
666 days	7.25	
667 days to 2 years	6.75	
above 2 year & upto 3 years	6.75	6.5
above 3 year & upto 5 years	6.5	6.25
above 5 years & upto 10 years	6.5	5.6

Canara Bank NRE FD rates

Canara Bank offers interest rate between 6.70% to 7.25% for tenure ranging from one yeat to 10 years. These rates are effective from April 5, 2023.

Period of Deposit	Less than Rs.2 Crore (w.e.f. 05.04.2023) Rate of Interest (% per annum)	Rs. 2 Crore & above to less than Rs. 10 Crore (w.e.f. 05.04.2023) Rate of Interest (% per annum)
1 year only.	7	6.15
444 Days	7.25	NA
Above 1 year to less than 2 years.	6.9	6.25
2 years & above to less than 3 years.	6.85	6.25
3 years & above to less than 5 years.	6.8	6.25
5 years & above to 10 years.	6.7	3.65

Currency fluctuations

NRE Accounts are subject to fluctuations in exchange rate risk. This means that if you deposit money in US dollars on June 1 and withdraw it in Indian rupees on June 30, there's a chance you'll get back more or less than you put in at the beginning. This is due to the lack of security provided by NRE Accounts from currency fluctuations, which are extremely volatile and subject to change on a regular basis.

(Originally published on Apr 18, 2023)

RATE THIS STORY

Nexus or Icebreaker? These two global money transfer ideas deserve a shot

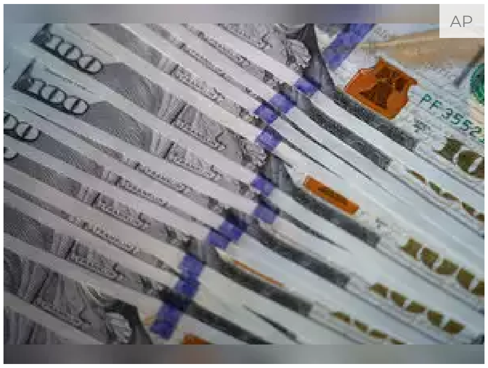
By Andy Mukherjee, Bloomberg Last Updated: Apr 18, 2023, 08:25 AM IST

Synopsis

The European payment system recently did a trial linkup with Malaysia and Singapore under the Bank for International Settlements' Nexus protocol, designed to transfer funds between bank accounts in different countries under 60 seconds. Meanwhile, the monetary authorities of Israel, Norway and Sweden have tested a separate BIS-backed initiative that achieves the same goal of fast cross-border retail payments. Project Icebreaker uses central bank digital currencies, or CBDCs, instead of bank accounts.

Nexus or Icebreaker? Two competing ideas are jostling for attention, each promising to reshape the inefficiency-ridden landscape of moving money from one country to another. Instead of trying to choose between them, central banks ought to give both a shot.

The European payment system recently did a trial linkup with Malaysia and



Representative Image (AP Photo/Matt Slocum)

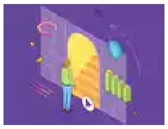
Singapore under the Bank for International Settlements' Nexus protocol, designed to transfer funds between bank accounts in different countries under 60 seconds. Meanwhile, the monetary authorities of Israel, Norway and Sweden have tested a separate BIS-backed initiative that achieves the same goal of fast cross-border retail payments. Project Icebreaker uses central bank digital currencies, or CBDCs, instead of bank accounts.

No prizes for guessing which of the two will get going first. Five countries in Southeast Asia, with a combined population of 490 million and gross domestic product of $2.6 trillion, have already decided to connect their domestic instant payment systems. Nexus is the obvious blueprint. Besides, CBDCs are mostly still undergoing pilot runs, or being evaluated for speed, scalability and privacy. Icebreaker can't take off before tokenized versions of official currencies become widely available.

Still, consumers paying an average 6.3% on a $200 transfer will welcome alternatives. Sending payment instructions via the SWIFT messaging system — a matter of minutes on the fastest routes — can take more than two days on some of the slowest. The late 18th-century technology of correspondent banking that runs with the help of those messages is anachronistic in today's world. In 64 countries, individuals are increasingly whipping out their smartphones to pay from deposit accounts, and expecting results in real time. According to Fidelity National Information Services Inc.'s latest report, payments from one bank account to another will account of 24% of India's e-commerce, 28% of Peru's, 35% of Brazil's and as much as 45% of Thailand's by 2026.

Those transactions, however, will occur in purely domestic settings. International borders complicate things by introducing exchange rates, sanctions lists and money-laundering safeguards, among other hurdles. Sill, retail users and small businesses are tired of paying through their nose for money transfers, as are nations that rely on remittances sent to families back home by their overseas diaspora. Cutting prices by 5 percentage points can save $16 billion a year, according to the World Bank.

The Great Indian UPI Migration
MAR 30, 2023



A new wave of growth: why India's fintech ecosystem will see faster evolution in 2023
APR 06, 2023

Venlo launches UPI-powered app for cross-border payments
APR 11, 2023

Nexus seeks to do just that. It won't be an app, but a common language, like the standard hypertext markup used in documents designed to be displayed in a web browser. It will eliminate the present-day barriers to communication between two national payment systems. If I give someone in another country my phone number, e-mail or virtual ID on which I'm accustomed to receiving a local money transfer, currently they won't be able to use it to pay me because my information is alien to their bank. With Nexus, the protocol will look me up for the sender's bank app, and display my full or partially masked name, so that they have the certainty of paying the right person.

Banks will only show their own currency conversion quotes to customers. Nexus will source buy/sell offers from multiple providers. Fees will be disclosed upfront. In this, Icebreaker will be similar to Nexus, even though it won't work by debiting and crediting deposits. When a transfer is done, the payer will be left with fewer digital tokens in her wallet; the recipient will have more. It will be analogous to a cross-border cash transaction, except that the Icebreaker hub will do the routing instead of the secretive "hawala" operators who have offered this service in the Middle East and the Indian sub-continent since medieval times.

The cryptographic technique of hashed time-locked contracts, which effectively sets up a digital escrow account, will ensure that the payer's money either reaches the payee or doesn't leave the wallet at all. Funds won't get stuck somewhere in the labyrinth for a silly spelling mistake.

Icebreaker will need more work to allay national authorities' fear of money-laundering and to make the new system easy for legitimate users. As the project's researchers have noted: "How does someone in one country get the wallet address of someone in another?" IBAN is an international standard for bank account numbers. It'll be a big help to have something similar for digital wallets.

The advantage of Icebreaker is that countries exploring CBDCs for domestic use won't have to worry if their choice of distributed ledger technology will come in the way of cross-border payments. The way the project is designed, funds won't physically go abroad; mutually incompatible technical systems can still participate in an exchange of value as long as each can individually connect to the Icebreaker hub.

When it comes to money crossing borders, roughly $1 trillion every year is on account of individuals paying one another and businesses. Financial institutions charge them between 140 to 380 basis points, according to McKinsey & Co. Small businesses aren't as badly fleeced as retail clients, though they still end up paying a steep 35 basis points on their $6 trillion. Only large corporations, which account for $90 trillion in annual flows, are able to flex their muscles and restrict the banks' margin to 5 basis points. Technology can level the playing field. Whether it's Nexus, Icebreaker or something entirely different, the speed of experimentation in this area is an encouraging sign: Cheaper transfers that never came to a bank near you are finally arriving on the smartphone in your pocket.

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Crypto taxation in India: What NRIs needs to know

ET CONTRIBUTORS
Last Updated: Apr 16, 2023, 12:10 PM IST

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Synopsis
India has clarified the tax implications of Virtual Digital Assets (VDAs), including cryptocurrencies and non-fungible tokens, brought under the definition of VDAs. The gains from the sale of VDAs may fall under either Capital Gains or Income from Business and Profession, while losses from one VDA cannot be used to offset gains from another VDA. The tax on gains from the transfer of VDAs will be at a special tax rate of 30%, with no exemption limit applicable.

Archit Gupta
Founder and CEO, Clear, Contributor Content

From being a software engineer in Silicon Valley to helming one of the India's largest start-ups, Archit Gupta, Founder and CEO at ClearTax, has spearheaded a massive paradigm shift in the fin-tech sector through the use of technology. In 2011, he founded ClearTax, a company offering online e-filing and taxation solutions.

In India cryptocurrency has been coined as 'Virtual Digital Asset' and along with cryptocurrencies, NFTs have also been included in the definition of Virtual Digital Asset. The taxability of the Virtual Digital Assets was a gray area until the budget of 2022; after the budget and subsequent clarification and FAQs issued at various times by the Income Tax department the taxation of Virtual Digital Asset has become clearer. Let us understand various facets of the taxation of Virtual Digital Asset.

What are Virtual Digital Assets: Any code or token which is generated through cryptographic means and functions as a store of value is called Virtual Digital Asset. It may have representation or promise of having inherent value. Virtual Digital Asset includes Non-Fungible Token. However, it doesn't include gift cards or vouchers which may be used to obtain goods or services or discount at a discount or free of cost or subscription of any website or platform.

Heads of Income for Virtual Digital Asset: It seems that the gains from sale of Virtual Digital Asset can be categorised under income from Capital Gains or even from Income form Business and Profession.The tax treatment, however, will not change under either of the heads of income. Schedule VDA has been placed under the head Capital Gains while Income from Business and Profession includes adjustments of income and expense of cryptocurrencies in schedule BP.

Computing the Gains: While computing the gains form transaction of VDA, only the cost of acquisition shall need to be deducted from the selling price. Any other expenses like selling expenses, mining expenses are not deductible. Furthermore, infrastructure expenses for mining can also not be deducted to arrive at the gains of VDA transactions.

Set off of losses: Each VDA is to be considered to be an asset class of its own. So, loss on transaction of a particular VDA cannot be used to set off the gains out of transaction of another VDA. For example, if a person has gains of Rs 1,00,000 arising out of transfer of Bitcoin and loss of Rs 70,000 out of transfer of Ethereum, then he has to pay taxes on the gains of Rs 1,00,000 on Bitcoin. The loss of Ethereum will not be used to set off the gains of Bitcoin and if there are no gains out of transfer of Ethereum, the loss of Rs 70,000 will be exhausted.

The tax on gains of transfer of VDA: The tax rate of gains out of transfer of VDA is 30%, which will need to be increased by the Health and Education Cess and surcharge if applicable. Furthermore, since the tax rate is a special rate of tax, the benefit of basic exemption limit shall not be applicable on it.

Example:
Mr A has following income during the FY 2022 - 23
Income from salary Rs. 2,00,000, Interest income Rs. 5,000 and Income from transfer of VDA Rs. 40,000.

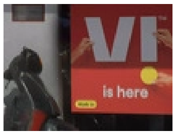
What will be his tax liability?
In this case total income (excluding Income from VDA) is below the maximum amount of income not chargeable to tax, i.e., less than Rs 2,50,000. Therefore, tax on income other than income from VDA is Nil. Tax on Income from VDA is Rs. 12,000 (Gains form transfer of VDA will be taxed at rate of 30% plus additional surcharge and cess).

Furthermore, if a person receives a gift in the form of VDA, then such gift received could fall within the ambit of gift tax under section 56 of Income Tax Act. Where VDA is received in exchange of nothing, i.e., as gift and the aggregate fair market value of such VDA exceeds Rs. 50,000, the whole of the aggregate fair market value of VDA will be chargeable to tax. Also, where any property is received for a price that is less than the aggregate fair market value of the VDA by an amount exceeding Rs. 50,000, the difference between fair market value and price paid is chargeable to tax.

In both the situations, the limit of Rs. 50,000 shall be checked for every transaction and not in aggregate of all transactions.

It is to be noted that, the section which governs the taxability of VDAs i.e. Section 115 BBH, doesn't distinguish between tax resident and tax non residents, so the taxability shall be the same for both tax resident and tax non resident. However if the NRIs transfers VDAs in exchanges located outside India from the VDA wallet located outside India and the proceeds come in bank accounts located outside India, then such gains will not be taxable in India in the hands of the NRIs.

(Disclaimer: The opinions expressed in this column are that of the writer. The facts and opinions expressed here do not reflect the views of www.economictimes.com.)



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