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DIRECT TAX NEWS

TDS ON CRYPTOCURRENCIES TO DRIVE VOLUMES OFF THE CLIFF

Nithin Kamath, CEO and co-founder at Zerodha, says with tax deduction at source (TDS) at 1 per cent being implemented from July 1, crypto volumes in India will drop off the cliff.

In a series of tweets, Kamath compared 1 per cent TDS on all crypto trades to tax collected at source (TCS) of 0.1 per cent on gold. "I assumed that the TDS is only on the gains," he said.

According to the provisions of this year’s finance bill, the buyer of a cryptocurrency has to deduct 1 per cent of the sale consideration and pay the amount as an advance tax to the government on behalf of the seller on every trade. The withholding will apply where sale consideration is more than or equal to Rs 50,000 (for specific individual payers) and Rs 10,000 for others. TDS must be deducted on both crypto-to-rupee and crypto-to-crypto swaps.
A 1 per cent TDS means 1 per cent of every trade value is blocked by the platform, Kamath said.

"So in 50 trades, 50 per cent of the account value can be blocked for TDS regardless of the P&L. Volumes are bound to drop and spreads can widen significantly. This will end up creating a snowball effect," he said.

THE EU MEANS BUSINESS WHEN IT COMES TO SHELL COMPANIES

On December 22, 2021, the EU Commission released a proposed directive—full of consequences—in hopes of eliminating such tax schemes. The directive denies tax benefits (and in some cases, slaps on withholding taxes) to entities who are shell companies—and for the most egregious offenders, it also adds new reporting requirements. Perhaps most importantly, though, the directive offers guidance on how tax authorities can detect companies that "exist merely on paper."

The directive outlines three levels of indicators that suggest a company could be a shell, existing solely for tax purposes. If a company meets even one of those criteria, it's flagged and denied certain tax benefits. If it's flagged under all three criteria, then the company will be held to additional reporting requirements. So, what are these indicators?

The first asks tax authorities to look at the last two years of a company's income and see how much of it is passive. If it's more than 75%, then the company will be called out.

The second level of indicators determines if most of the entity's assets are located outside the country or most of the transactions are cross-border. If more than 60% of the book value of the company's assets are located outside the country or at least 60% of business transactions stem from transactions with other jurisdictions, then that's a signal the company could be a shell.

The third level of indicators looks at the company's management and staff to see how much of the business is conducted in-house. If over the last two years, day-to-day operations were outsourced, then again, that's a signal that something's up. Having just one indication is bad enough, but if a company meets all three criteria, then things get even worse.

Companies will have to defend their economic substance in their tax returns, including, of course, supporting documentation. If a company wants to contest the determination, it can—and the directive outlines how, starting with establishing the commercial (non-tax) reasons for its existence and the decision-making that takes place at the entity.

CENTRE TO BRING ATF INCLUSION IN GST FOR DISCUSSION IN NEXT COUNCIL MEET: FM NIRMALA SITHARAMAN

The Centre will move the issue of bringing aviation turbine fuel (ATF) under the GST net for discussion in the next meeting of the GST Council, Finance Minister Nirmala Sitharaman said on Sunday, while noting that rising global fuel prices are a "concern". When the GST was introduced on July 1, 2017, amalgamating over a dozen central and state levies, five commodities of crude oil, natural gas, petrol, diesel and ATF were kept out of its purview given the revenue dependence of the central and state governments on this sector.

Sitharaman, in a post-Budget discussion with industry chamber Assocham, said a final decision of inclusion of ATF in GST will be taken by the Council, which comprises finance ministers from central and state governments.

"It is not with … (the Centre) alone, it has got to go to the GST Council. The next time we meet in the Council, I will put it on the table for them to discuss it," she said. The next meeting of the Council is expected by either in end-February or in March.

Sitharaman was responding to views expressed by SpiceJet Founder Ajay Singh where he sought the support of the Union finance minister in bringing ATF under the GST regime.

TODAY'S QUOTE

"The fruit of your own hard work is the sweetest."

-Deepika Padukone

AKSHAY SHAH
Email: ca.akshah@gmail.com
Contact No.: 9958975768
Website: www.jainshah.com

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