

# TAXTIME

NEWSLETTER

## DIRECT TAX NEWS

### GOVT OPEN TO 'REWORKING' CAPITAL GAINS TAX REGIME



The Finance Ministry wants to do a comprehensive review of the capital gains tax regime and is open to tinkering with it when it gets an opportunity to do so, Revenue Secretary Tarun Bajaj said on Wednesday.

Addressing an interactive session with the Confederation of Indian Industry (CII), Bajaj said, "We need to rework on the capital gains structure, on everything including rates and the holding periods."

Bajaj asked the CII to undertake, in the next three to four months, a comprehensive study of the capital gains tax regime in developed and developing countries in terms of the rates and holding periods and submit a report to the Revenue department. He highlighted that the study can supplement the huge quantum of information that is already with the department.

The Secretary also noted that the capital gains tax regime in India has turned out to be "too complicated" as different rates and holding periods have been set for different sectors, asset classes and instruments such as real estate and equities and InvITs. "For real estate, we have made it 24 months, 12 months for shares and 36 months for InvITs," he noted.

Bajaj highlighted that the government expects to get a "good amount" of revenue from capital gains tax during this fiscal on the back of sharp rise in stock markets.

"In spite of the fact that capital gains tax rates are much lower at 10 and 15 per cent on the stock market for short and long terms, we are expecting to make an estimated ₹60,000- 80,000 crore this fiscal, up from ₹6,000- 8,000 crore last fiscal.

## OECD LAUNCHES PUBLIC CONSULTATION ON PILLAR ONE DRAFT MODEL RULES



On February 4, 2022, the OECD released draft model rules with respect to nexus and revenue sourcing under Amount A of Pillar One. As part of the ongoing work of the OECD/G20 Inclusive Framework on BEPS to implement the two-pillar solution to address the tax challenges arising from the digitalisation of the economy, the OECD is seeking public comments on these draft rules and has invited interested parties to send their written comments no later than February 18, 2022.

Amount A of Pillar One has been developed as part of the solution for addressing tax challenges emanating from the digital economy. It introduces a new taxing right over a portion of the profit of large and highly profitable enterprises for jurisdictions in which goods or services are supplied or consumers are located.

### Model rules

The rules are yet to be finalized and they are being developed to provide a template that jurisdictions could use as the basis to give effect to the new taxing rights over Amount A in their domestic legislation.

### Nexus test

The nexus rule applies solely to determine whether a jurisdiction qualifies for profit reallocation under Amount A. To satisfy the nexus test for Amount A in a jurisdiction, a multinational entity will have to apply the revenue sourcing rules, which identify the jurisdiction in which revenue arises for purposes of Amount A. The nexus threshold will be EUR 1 million for jurisdictions with annual gross domestic product equal to or greater than EUR 40 billion and EUR 250,000 for jurisdictions with annual GDP of less than EUR 40 billion.

### Pillar 2 and Amount B of Pillar 1

For Amount B of Pillar One, a public consultation document will be issued in mid-2022, with a public consultation event to follow the comment period and for the subject to tax rule (STTR) of Pillar Two, the draft model provision and its commentary will be released in March 2022 with a defined set of questions set for input. A public discussion draft on the development of a multilateral instrument to facilitate the implementation of the STTR also would be released for comment at the same time

## GOVT LOOKING TO LEVY GST ON MINING OF CRYPTOCURRENCIES



Post introduction of the new direct tax regime for virtual digital assets, the government is exploring ways to levy the Goods and Services Tax (GST) on the mining of such an asset, popularly known as cryptocurrency.

The key issue here is whether to treat the mining as goods or service. According to the Subhash Chandra Garg Committee, set up to propose specific actions on virtual currencies (2019), "Mining" means an activity aimed at creating a cryptocurrency and/or validating a transaction of cryptocurrency between the buyer and seller of cryptocurrency."

"Mining is key to VDA transaction. First, a call is to be taken whether to treat mining as goods or service and, then, place it accordingly in a category from the GST point of view," a senior government official told BusinessLine.

As on date, commission for facilitating purchase and sale of cryptocurrencies attract GST.

Kanwal Prakash Singh, Head of Quant at CoinDCX, said any platform that provides the infrastructure for mining of cryptos such as Bitcoin, is a standard case of service providers. Miners provide a service of 'verifying and processing the transaction' usually by solving a 'cryptographic puzzle'.

This service is rewarded in terms of a token (such as Bitcoin or BTC, Ether or ETHC) depending on the token mined.

By this understanding, "the miner's payment (mining reward) should be treated as a service fee and maybe considered for GST," he said, adding that indirect tax may be charged on the VWAP (Volume Weighted Average Price) of token in INR-based pairs. For Non Fungible Token (NFT), he said, the marketplace is to be taken as service provider while the instrument is to be taken as goods.

"Given that while levying a tax, the government will have to clearly specify what, when, who and on how much tax is payable, more importantly (it should be) who is the person liable to be taxed," an expert said.

Sathvik Vishwanath, co-founder, Unocoin, said, "levying GST on crypto mining will be challenging as there will be issues such as what price it was mined at and liquidated at could be different. How far it can be tracked or traced will also be a challenge. No one is explicitly paying for the creation of the asset and there is no seller for mined cryptos. There is also a question — if the transaction fee obtained from mining is a service and if GST should be paid through reverse calculation mechanism."

# TODAY'S QUOTE

*"Be yourself;  
everyone else is already taken."*  
- Oscar Wilde

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**AKSHAY SHAH**

**Email: [ca.akshah@gmail.com](mailto:ca.akshah@gmail.com)**

**Contact No.: 9958975768**

**Website: [www.jainshah.com](http://www.jainshah.com)**