Challenges in Taxing Bitcoins

Why in news?

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Union government is working on the complexities in taxing bitcoins.

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What are Bitcoins?

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- Crypto-currency is a digital currency that allows transacting parties to remain anonymous while confirming the transaction is valid.
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- Bitcoins are cryptocurrencies which are most commonly used across the globe, they do not have geographical borders or limitations.
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- These currencies can be bought from various international exchanges using credit cards or other electronic means.
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- These can also be created by a process called mining, which means adding transaction records to the currency ledger. Click here know more about crypto currencies.
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What are complexities in taxing cryptocurrencies?

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- **Taxing as a currency -**According to the Foreign Exchange Management (FEMA) Act, 1999, includes currency notes, postal notes, postal orders, money orders, cheques, drafts, traveller's cheques, letters of credit, bills of exchange and promissory notes, credit cards and other such instruments, as notified by the RBI.
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- As various entities accept bitcoin as a mode of payment, it appears that it is a

currency.
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- But it has not been termed as a currency under the FEMA Act, or as legal tender by the RBI, so it may not qualify as currency.
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- **Taxing as a capital asset -** According to Section 2 (14) of the Income Tax Act, 1961, a capital asset means a property of any kind held by a person, whether or not connected with his business or profession.
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- The term 'property' has no statutory meaning, yet it signifies every possible interest that a person can acquire, hold or enjoy.
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- Still now there is no clear view in considering bitcoin as a capital asset.
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- **Taxing as capital gains from sale -**If gains arising from transfer of bitcoins are treated as capital gains, their further classification into short-term or long-term gain will depend on the period of holding of bitcoins.
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- If a bitcoin is held for more than 36 months, it will be considered a long-term capital asset.
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- If the period of holding is lower, it will be treated as a short-term capital asset, thus bitcoins need to be taxed accordingly which is again making the process lengthy
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- **Taxing bitcoins earned through mining -** If profits earned from bitcoins are taxable as business income, then the bitcoins earned in the 'mining' process would also be taxable as business profits.
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- If bitcoins are classified as capital assets, the virtual currency earned from bitcoin mining may not be taxed.
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- Since bitcoins generated through mining process are classifiable as self-generated capital assets and the cost of acquisition of such bitcoins may not be available.
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- **Taxing sale of bitcoin by NRI** - If Bitcoin is an intangible asset, income accruing or arising from its transfer outside India by a person who is not a resident in India cannot be taxed in India.
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- Hence, sale of bitcoin by an NRI through an Indian bitcoin exchange may not be taxed in India.
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- **Taxing under GST -**If bitcoin gets classified as a currency, it will be

considered as ‘money’ in the CGST Act and no GST can be charged on its trading.
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- However, exchanging bitcoin to rupees might be considered a service for the purpose of levy of GST under the category of ‘financial services’.
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- Therefore, the supplier (who is selling the bitcoin) may be required to pay 18 per cent GST on the total value charged by him from the buyer.
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What measures needs to be considered in bitcoin taxation?

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- RBI need to clears its stand on considering bitcoin as a currency, If RBI declares it to be a currency, any trading in it will be subject to FEMA regulations.
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- Bitcoins could be deemed a capital asset if they are purchased for investment and any gain arising on transfer of a bitcoin shall be taxable as capital gain.
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- If the transactions in bitcoins are substantial and frequent, it could be held that the taxpayer is trading in bitcoins, and the income would be taxable as business income.
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- Foreign transactions in bitcoin shall be treated as capital account transactions and any dealing in bitcoin could be mandated by the RBI.
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Source: Business Line

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