Taxing the Cryptocurrencies

Why in news?

The Centre is planning new changes in the income tax laws in a bid to bring cryptocurrencies under the tax radar.

What is the stand of India regarding crypto currencies?

- The RBI has repeatedly highlighted that it feels cryptocurrencies like BitCoin may pose a risk to financial stability and also questioned its claims of market value.
- The Supreme Court however nullified the RBI circular banning cryptocurrencies and it set aside an RBI circular that prohibited banks and entities regulated by it from providing services with connection to virtual currencies.
- The government feels that the RBI's objections are too stringent and centred around a ban as in China.
- The government had released '**The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021'** to create a facilitative framework for creation of the official digital currency to be issued by the RBI.
- The Bill appeared to be based on the recommendations of the SC Garg Committee formed by the Centre.
- It seeks to prohibit all private cryptocurrencies in India but it allows for certain exceptions to promote the underlying technology of crytptocurrency and its uses.
- Recently, government officials met representatives of crypto-exchanges, Block chain and Crypto Assets Council (BACC) and have arrived at a conclusion that cryptocurrencies should not be banned but should be regulated.
- There is a proposal to bring cryptocurrency under the ambit of tax amid reports that the government is about to introduce a bill on cryptocurrencies during the winter session of Parliament.

How can the cryptos be put under the ambit of taxation?

- One of the methods is to classify crypto-exchanges as "**e-commerce platforms**" so that the tax collection at source provisions would apply.

- Another thought is that those involved in cryptocurrency trading could be categorised as "**facilitator, brokerage**" and GST be collected on these services.
- The government could categorise services provided by overseas cryptocurrency exchanges that allow Indians to trade on their platforms as online information database access and retrieval (OIDAR) devices.

What is the Central Economic Intelligence Bureau (CEIB)'s proposal in this regard?

- The act of cryptocurrency mining could be treated as a supply of service and should be classified as an intangible asset and attract a GST of 18%
- Taxpayers operating as cryptocurrency miners will be required to register under GST if their annual revenue exceeds Rs.20 lakh.
- Trading of cryptocurrency and other related transactions like transfer, storage, accounting etc are also likely to be considered as an act of supply and could be taxed.
- In cases where the buyer and seller are registered as Indian residents and operators, the transaction should be treated as a supply of software.
- International cryptocurrency transactions by companies registered in India will be treated as import or export of goods and as such will be liable to IGST.
- Another major reason to consider bringing cryptocurrencies under the GST purview is to curb money laundering and undermining of legitimate currencies.

What are the issues in taxing the crypto currencies?

- **Nature of Cryptos** - Virtual coins are not considered an asset, security, or even currency in India.
- The cryptocurrency has to be treated as an asset, security or currency before GST can be charged on services offered by overseas cryptocurrency exchanges.
- **Taxation procedure** - It has to be first determined whether GST will be applicable on all transactions or only on the margins.
- As on date, most Indian cryptocurrency exchanges pay 18% GST on margins or the commission that they charge.
- **Payment in Cryptos** - It is obvious that the Balances in Electronic Cash and Credit Ledger cannot be stated in cryptos.
- Also, one cannot pay tax in cryptos as of now.
- **Grey areas in GST laws** - The definition of an intermediary and the tax

on their services has been going back and forth for sometime.
- There is also a necessity to think of a new HSN/SAC Code for cryptos.

Under GST, all goods and services transacted in India are classified under the HSN code system or SAC Code system. Based on the HSN or SAC code, GST rates have been fixed in five slabs, namely NIL, 5%, 12%, 18% and 28%.

What has to be done before taxing the cryptos?

- Government should ensure that it covers all aspects governing virtual currencies and not only their tax aspects in the forthcoming Crypto Bill.
- FAQs and Educational Material with regard to GST on cryptos and a detailed document on cryptos is needed to prevent aggressive assessment orders being passed.
- Some fintech company located in India may workon building a product that permits payments in GST to be made from normal banking channels using cryptos as a reference point.

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