

GST on Bitcoin

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Rajat Mohan

Senior Partner, AMRG & Associates



Swati Ghoshal

Partner, AMRG & Associates

Cryptocurrencies like bitcoin are decentralized digital currencies relying on a peer-to-peer network that operates without the need for a third-party intermediary like the Reserve Bank of India. Tied with a lack of governing guidance, its exceptional technical aspects create difficulties in its taxation. One key advantage of using cryptocurrency is that it is almost impossible to counterfeit. This is due to cryptography being used as part of transactions, ensuring everything is safe and sound. Bitcoin was the first-ever cryptocurrency created in the year 2009 by "Satoshi Nakamoto". Successively, there has been a rapid increase in the number of cryptocurrencies that have been formed some of which are Litecoin, Ethereum, Zcash, Dash, Ripple, etc.

India has one of the largest economies in the world, would always fear something which has the potential to replace the fiat currency primarily because it does not have the know-how to curb the wrong practices which can result from crypto trading. The establishment and transfer of bitcoins are based on an open-source cryptographic convention that is being managed in a decentralized manner. Bitcoin network shares a public ledger, which is called "blockchain". This ledger encloses information of every transaction administered, thereby, allowing the user's computer to verify the soundness of each transaction. The authenticity of each transaction is protected by digital signatures, permitting all users to have a complete mechanism over sending bitcoins from their bitcoin addresses. This whole process is known as "mining".

In the Year 2018, the Reserve Bank of India (RBI) imposed a ban on the dealings of Virtual Currencies through the medium of the financial institution. The main argument for banning financial institutions dealing with Cryptocurrencies is that it has no certified form of virtual currency. In the Year 2020, the Indian Supreme Court reversed the 2018 ban through a judgment on banks and other financial institutions from offering their funding, support, and services for cryptocurrencies. This was a welcome relief for many. However, this is now being re-evaluated, putting the future of many crypto businesses at risk.

Wherever there is a business, the role of taxation cannot be underplayed. Whether legal or illegal, Bitcoin is playing a role in India, which is bound to catch fire in the next years. It is crucial to understand various aspect of the taxation of this currency legally as well as practically.

GST applicability on Bitcoins

Everyone is aware of GST and the vagueness created by it. A layman or a proficient, no one is left intact by its impact, not even our economy and business.

The bitcoin trade varies from country to country. For example: In the USA it is treated like an asset having the nature of fixed or an inventory asset. While in the UK it is a 'private currency'. In Singapore, Bitcoin is known as a valid currency, while in Japan Bitcoin is called a commodity.

As per a proposal raised by Central Economic Intelligence Bureau (CEIB), Cryptocurrencies like bitcoin can be categorized into intangible assets and GST can be levied on the same at the rate of 18% GST.

Legally speaking as per the provisions of GST, the classification of cryptocurrencies can be done as follows:

- **Goods:** As per Section 2(52) of CGST Act, 2017, Goods are defined as "every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply".

- **Services:** As per Section 2(102) of CGST Act, 2017, Services are defined as "anything other than goods, money, and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation.—for the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities."

- **Money:** As per section 2(75) of CGST Act, 2017, Money will be defined as "the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, travellercheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;"

- **Securities:** As per Section 2(h) of Securities Contract Regulation Act, 1956, securities include "shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;"

GST is leviable on the supply of goods or services or both only. If Bitcoin falls under the scope of Goods or Services, then GST will be applicable on trade of bitcoins otherwise; not. However, there is one major challenge in the taxation of Bitcoin. Whether it would be treated as Goods or services? What would be the HSN? What would be the tax rate? These all are open issues that have never been dealt up till now by anyone. There seems to be neither any discussion nor any deliberation in GST council on this topic. We are far from a formal determination of taxes in the case of cryptocurrency.

If, However Bitcoin is approved by RBI as "legal currency," then like any other currencies INR, USD, payment to wallets etc. it will not be chargeable to GST per se.

If law declares the same as security, then also no GST would be applicable on trading of such securities like listed shares, unlisted shares, debentures etc.

Tax authorities

Now the moot question remains, what will happen till any formal decision is taken by law on this aspect. How will grass-root tax officials behave when they unearth a transaction in cryptocurrency.

For practical purposes, if any person is caught trading in cryptocurrency, GST authorities may not let it go unnoticed. They would initiate some action to keep the case alive. There is a Heading 9997 in the case of supply services, which intends to tax any service which is "nowhere else classified," and the tax rate would be 18%. Similarly, there is a residuary entry no. 453 also in the classification of Goods, which taxes all other classes of goods @18%.

Meaning thereby tax officials will initiate action on the transaction with cryptocurrency and are also expected to press for recovery of such computed taxes.

Conclusion

CEIB has pegged the [value of bitcoin transactions](#) in the country at INR 40,000 crore annually. Also, as we understand, a study is planned on implementing GST on cryptocurrencies.

The cryptocurrency market is very immature in India, and the taxpayers dealing in such trades are unaware of the real treatment in accounts and tax. Therefore, it is vital for the officials to come out with some transparency in the system & regulation of bitcoins in India. Delay would lead to different treatments being given by various taxpayers. Even though the success of bitcoins as a medium of exchange is not genuine, it seems highly promising and innovative and therefore requires serious opinions. Sooner or later, government will define the provisions of Bitcoin for the proper implementation of Cryptocurrency in India. However, tax authorities should have a framework ready for the appropriate taxation and administration of Bitcoins.