

TAX FLASH NEWS

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CBDT issues notifications on the definition of virtual digital asset, prescribes list of excluded assets and defines non-fungible tokens

The Finance Act, 2022 introduced a new taxation regime for income arising from transfer of Virtual Digital Asset (VDA) under Income-tax Act, 1961 (the Act). The term VDA has been defined under section 2(47A) of the Act to cover the following:

- Any information or code or number or token (not being Indian currency or foreign currency) which meets certain conditions¹.
- Non-fungible token (NFT) or any other token of similar nature, by whatever name called. Further NFT is defined to mean such digital asset as the Central Government may, by notification in the Official Gazette, specify².
- Any other digital asset, as the Central Government may, by notification in the Official Gazette, specify³.

The definition further authorises the Central Government to issue notification to exclude any digital asset from the definition of VDA, subject to such conditions as may be prescribed therein.

The Central Board of Direct Taxes (CBDT) on 30 June 2022 has issued two Notifications⁴ for the purpose of definition of VDA under section 2(47A). First notification excludes certain assets from the definition of VDA and the second notification defines NFT for the purpose of the Section.

These Notifications are summarised as follows:

CBDT Notification no. 74

The following assets are notified to be excluded from the definition of VDA:

- Gift card or vouchers, being a record that may be used to obtain goods or services or a discount on goods or services.
- Mileage points, reward points or loyalty card, being a record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate or promotional program that may be used or redeemed only to obtain goods or services or a discount on goods or services.
- Subscription to websites or platforms or application.

CBDT Notification no. 75

- A token which qualifies to be a VDA has been specified as an NFT for the purpose of Section 2(47A)
- An NFT whose transfer results in transfer of ownership of underlying tangible asset and the transfer of ownership of such underlying tangible asset is legally enforceable is excluded.

Our comments

The Finance Act 2022 introduced a new taxation regime for VDAs, under which no deduction of any expenditure (other than cost of acquisition), allowance or set off of losses is allowed for computation of VDA income. Also, the definition of VDA was broad and covers various non-crypto digital assets. Thus, these notifications assume significance as the excluded assets would be taxed under the normal tax regime.

¹ Section 2(47A)(a)

² Section 2(47A)(b) read with clause (a) of the Explanation

³ Section 2(47A)(c)

⁴ Notification No. 74/2022, dated 30 June 2022 under proviso to section 2(47A), Notification No. 75/2022, dated 30 June 2022 under clause (a) of Explanation to Section 2(47A)

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