

GST Relearn Refresher Series (Virtual)

Org : WIRC, ICAI

GST – Digital Economy & Digital Products

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GST # Bhagwat Geeta

Different Interpretations by DIFFERENT persons at the SAME time

GST as per Law (Implemented / Proposed/Announced/Press Release)

GST as per Businessmen

GST as per Consultants

GST as per Officers

GST as per GSTN

Different Interpretations by SAME person at the DIFFERENT time periods



DIGITAL ECONOMY

E Commerce

Q Commerce

Digital Wallet

Fintech

Health-tech

Gaming

Crypto - Currency

NFTs



Digital Economy

The Digital economy exists within a virtual or digital world where people can perform economic activities and transactions in exchange for virtual or real assets.

The virtual economy functions using a **platform or system** that enables the trade of virtual currencies or goods. Activities such as gaming, socializing, working, and trading happens on these virtual platforms.

Common Digital Products



E-Commerce

The activity of electronically buying or selling of products on online services or over the Internet.



Q-Commerce

Getting products delivered within an hour of ordering .



Digital Wallet

These are financial applications that allow you to store funds, make transactions, and track payment histories on devices like phones and tablets.

Common Digital Products



Fin Tech

It aims to improve and automate the use and delivery of financial services. Banking, Insurance, Crowd Funding, Stock Trading, Financing, Mob Pay

Web APP	Web APP
PharmEasy	Human Anatomy Atlas 2021: Complete 3D Human Body
Practo	Squeezy: NHS Pelvic Floor App
Apollo 247	Freya - Surge Timer
Mfine	Pedi-STAT
Netmeds	Critical - Medical Guide

Health Tech

Technology-enabled healthcare product and service that can be delivered or consumed outside of a hospital or physician's office.



Online Gaming

Video game that is either partially or primarily played through the Internet or any other computer network available



VIRTUAL DIGITAL ASSETS

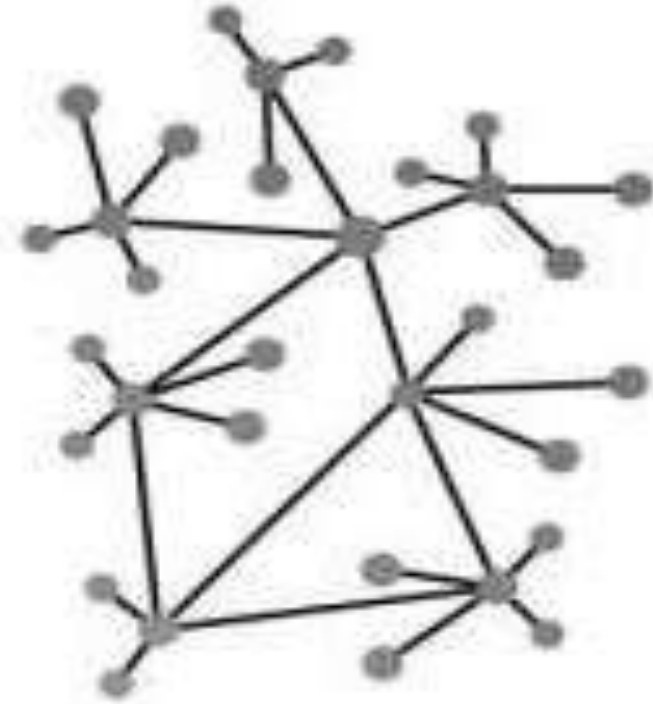
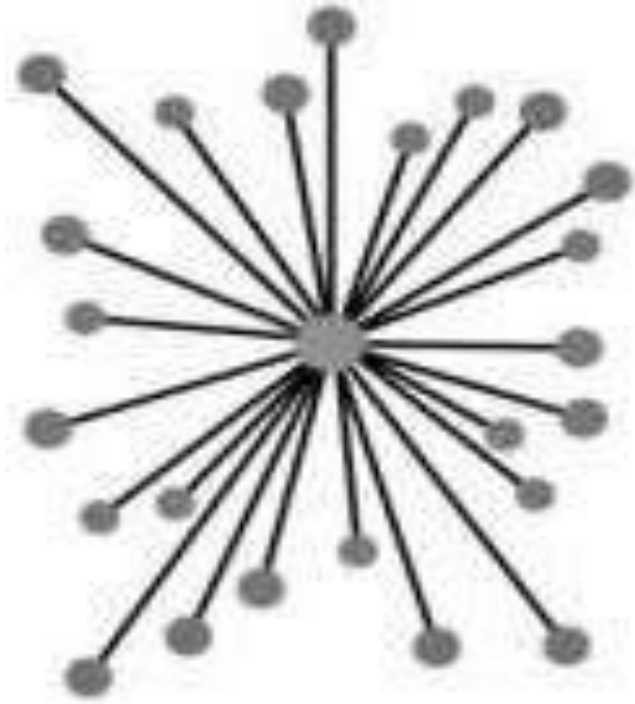
BLOCK CHAIN TECHNOLOGY

*“blockchain is a particular type of data structure used in some **distributed ledgers** which stores and transmits data in packages called ‘blocks’ that are connected to each other in a digital ‘chain’.*

Blockchain employ cryptographic and algorithmic methods to record and synchronize data across a network in an immutable manner.”

Prof. Dr. Robby Houben and
Alexander Snyersa

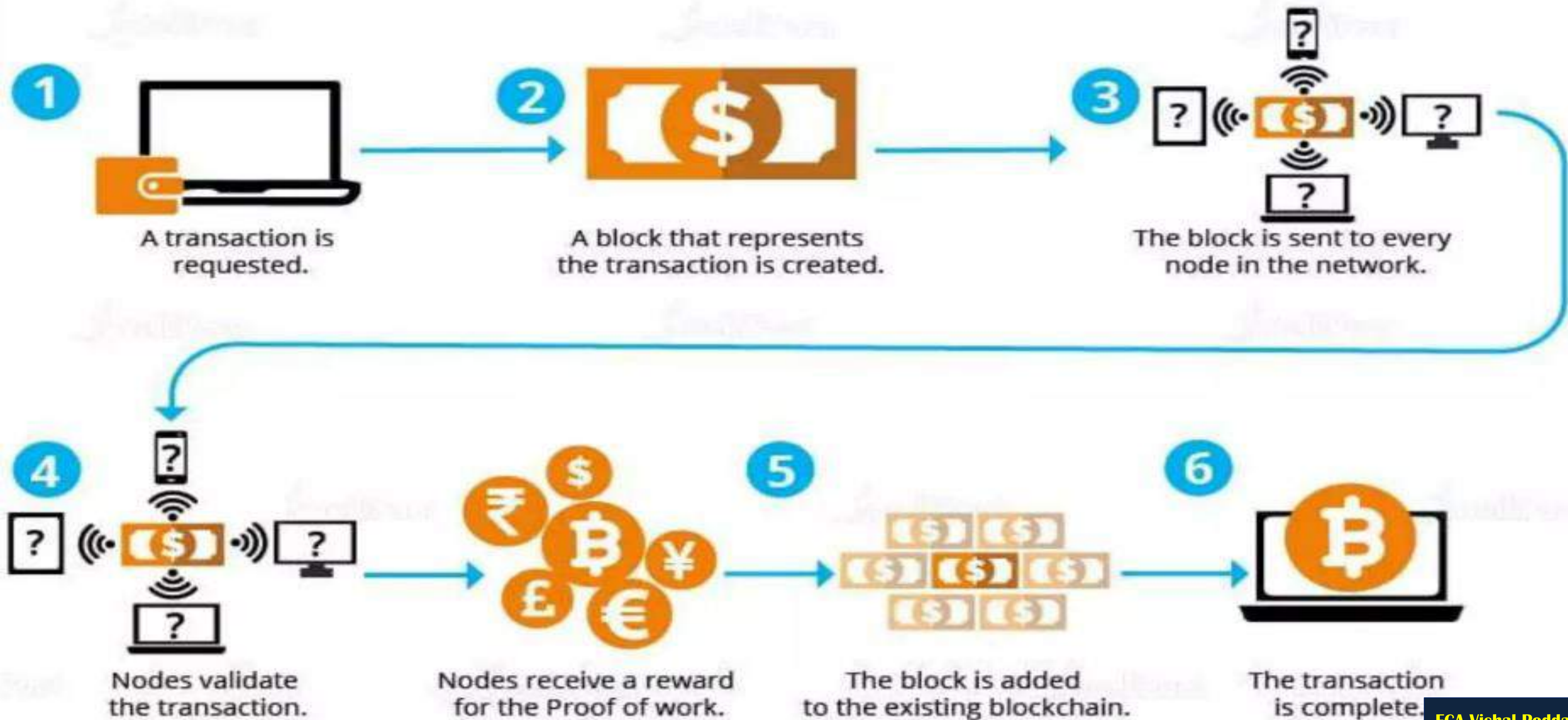
BLOCK CHAIN TECHNOLOGY



Block chain is based on distributed ledger, based on consensus, as against centralized or a decentralized system

Here Distributed would mean a system which shares processing and/or data across multiple nodes, each of them having authority, control and/or truth. And Consensus would mean agreement between different participating nodes or persons with authority

How Do Blockchains Work?



DIGITAL CURRENCY

Satoshi Nakamoto
Vitalik Buterin

Digital currencies use the blockchain technology and rely heavily on authentication tools such as cryptography and data security, to ensure that data transfer between people, is secure and cannot be altered or breached

"Cryptography" means "secret writing", which is the ability to exchange messages that can be read only by the intended recipient.



DIGITAL CURRENCY

Alt-Coins

Altcoin refers to all digital cryptocurrency launched following the success of Bitcoin. hence the name, which means "alternative to Bitcoin".

There are over 900 Altcoin currencies that have been created since Bitcoin.



Other Cryptocurrencies



DIGITAL CURRENCY



Diem (formerly known as Libra) is proposed by Facebook. The plan also includes a private currency implemented as a cryptocurrency. The currency and network do not yet exist. The launch was planned to be in 2021.

Diem (Libra)



It was launched in 2015. It is based on Ethereum Technology. It uses smart contract to guaranty of a transaction. It takes 25 sec for block creation.

Ether



Ripple

It was launched in 2012. It offers Interoperability between different financial systems. It takes less than 4 sec in block creation. Ripple Collaborates with American Express and Bank of America.



Litecoin

It was launched in 2011. Total supply is 84 million. Block creation time is then Bitcoin. In Bitcoin it takes 10 min and in Litecoin in take 2.5 min

Stable Coins

Stablecoins are cryptocurrencies designed to minimize the volatility of the price of the stablecoin, relative to some "stable" asset or basket of assets. A stablecoin can be pegged to a cryptocurrency, fiat money, or to exchange-traded commodities.

NON FUNGIBLE TOKENS - NFTs

NFT stands for non-fungible token. It's generally built using the same kind of programming as cryptocurrency, like Bitcoin or Ethereum, but that's where the similarity ends.

An NFT is a **digital asset** that can come in the form of **art, music, in-game items, videos, and more**. They are generally encoded with the same underlying software as many cryptos



NON FUNGIBLE TOKENS - NFTs

NFTs are typically held on the Ethereum blockchain, although other blockchains support them as well.

An NFT is created, or “minted” from **digital objects that represent both tangible and intangible items.**

Even tweets count. Twitter co-founder Jack Dorsey sold his first ever tweet as an NFT for more than \$2.9 million

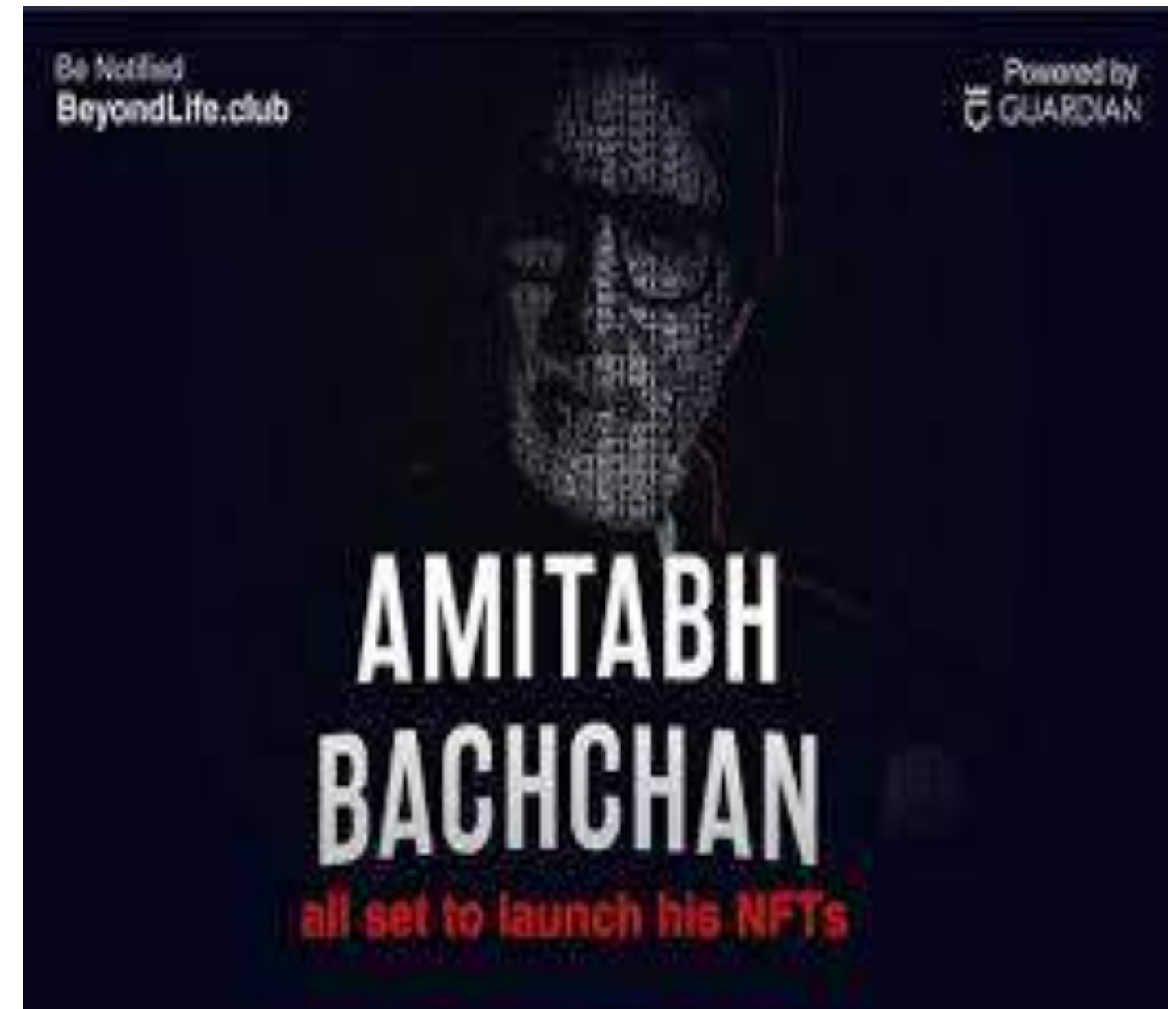


NON FUNGIBLE TOKENS - NFTs

Blockchain technology and NFTs afford artists and content creators a unique opportunity to monetize their wares. For example, artists no longer have to rely on galleries or auction houses to sell their art. Instead, the artist can sell it directly to the consumer as an NFT,

NFTs can represent real-world items like artwork and real estate. NFT can **digitally represent any asset**, including online-only assets like digital artwork and real assets such as real estate.

"Tokenizing" these real-world tangible assets **makes buying, selling, and trading them more efficient** while reducing the probability of fraud





GST Implications on Virtual Digital Assets

VIRTUAL DIGITAL ASSETS

Virtual Currency	Security Tokens	NFTs	Utility Tokens
They are identical in operation to any FIAT currency, which have inherent value, a unit of account and functions as a store of value	They are held for investment purposes and similar to any shares or Securities	NFTs are generally one of a kind, or at least one of a very limited run, and have unique identifying codes	They are used for exchange of specific goods or services, similar to pre-payment voucher
Bitcoin, Ether, Litecoin, etc., are examples of virtual currency	Sia Funds, Spice, BCAP, tZero, are examples of Security tokens	Graphic art, GIFs, Videos and sports highlights, Collectibles, video game skins,	

A stack of silver coins is shown in a close-up, slightly blurred perspective. The coins are stacked on top of each other, with the top coin being the most prominent. The background is a dark, textured surface. On the left side of the image, there is a yellow scribble consisting of several overlapping loops. The text 'TAXING VIRTUAL DIGITAL CURRENCY' is overlaid on the bottom left of the image, with 'DIGITAL CURRENCY' highlighted in a yellow oval.

**TAXING VIRTUAL
DIGITAL CURRENCY**

Taxing Virtual Digital Currency

Crypto-Currency - A Global Perspective

International Monetary Fund

Virtual Currencies **are digital representations of value**, issued by private developers and denominated in their own unit of account, which can be obtained, stored, accessed, and transacted electronically, that are useable for a variety of purposes.

European Securities and Markets Authority

Crypto-assets is a type of **private asset that depends primarily on cryptography** and Distributed Ledger Technology (DLT) or similar technology as part of their perceived or inherent value.

Canada Revenue Agency

Cryptocurrency is a **digital representation of value that is not legal tender**. It is a digital asset that works as a medium of exchange for goods and services between the parties who agree to use it



Income Tax Act - India

“virtual digital asset” means

- (a) any **information or code or number or token** (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a **digital representation of value exchanged with or without consideration**, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; **and can be transferred, stored or traded electronically**;
- (b) **a non-fungible token or any other token** of similar nature, by whatever name called;
- (c) any **other digital asset**, as the Central Government may, by notification in the Official Gazette specify;

Austria

Treats virtual currency as **‘other intangible commodity’**

Czech Republic

Treats virtual currency as **‘commodity’**

Medium of Exchange

Virtual currencies are considered as **‘financial instruments’**

El Salvador & Central African Republic

Bitcoin is **accepted as legal tender or currency**

Taxing Virtual Digital Currency

Crypto-Currency - International Jurisprudence

Sherman Division Eastern District Court of Texas opined in SEC Vs. Trendon Shavers, [Case No. 4: 13-Cv-416 (August 6, 2013)]

"It is clear that bitcoin can be used as money. It can be used to purchase goods or services and also be exchanged for conventional currencies such as the US dollar, euro, yen and Yuan. **Therefore, bitcoin is a currency or form of money...**"



European Court of Justice in Skatteverket Vs. David Hedqvist, [0 Case C-264/14 dated 22-10-2015]

Article 135(1)(e) EU Council VAT Directive 2006/112/EC is applicable to non-traditional currencies i.e., to currencies other than those that are legal tender in one or more countries in so far as those currencies have been accepted by the parties to a transaction as an alternative to legal tender and have no purpose other than to be a means of payment. The court accordingly concluded that **virtual currencies would fall under this definition of "non-traditional currencies"**.

United States District Court, District of Massachusetts in Commodity Futures Trading Commission Vs. My Big Coin Pay, Inc. et al. [18-Cv-10077-RWZ dated 26-09-2018], since there is, futures trading in virtual currencies, **they constitute 'commodity'** within the meaning of the Statute.

Court of Appeal reversed the decision of the Circuit Court in the case of State of Florida Vs. Michell Abner Espinoza [264 So. 3d 1055 (2019)]

though Bitcoin does not expressly fall within definition of "currency" found in the statute, the court held that **Bitcoin would certainly fall under the definition of a payment instrument**

AA Vs. Persons Unknown [[2019] EWHC 3556 (Comm)],

"The House of Lords further noted that "crypto currencies are not legal tender in the sense of being a regulated currency issued by a government but do **have the fundamental characteristic of intangible property** as being an identifiable thing of value".

Taxing Virtual Digital Currency

The Indian Story....

Year	Regulatory Framework
2013	The RBI vide Press Release dated 24 December 2013 cautioned the users about the risks associated with virtual currencies, including money laundering, consumer protection, market integrity, cybersecurity and volatility.
2017	Two cautionary press releases were made on February 1, 2017 and December 5, 2017, respectively, through which RBI reiterated the risks and clarified that it has not given any license or authorization to any entity or company to operate schemes or deal with Bitcoin or any other VCs.
2018	The RBI issued Circular which prohibited entities regulated by RBI from dealing in virtual currency.
2019	In February 2019 the committee proposed a fresh draft bill that recommended a blanket ban.

Taxing Virtual Digital Currency

The Indian Story....

Year	Regulatory Framework
2020	Hon'ble Supreme Court on March 4, 2020 in Internet and Mobile Association of India V. Reserve Bank of India , lifted the ban imposed by the RBI Circular. The court predominantly examined the matter from the perspective of Article 19(1)(g) of the Indian Constitution, which is the freedom to practice any profession, or to carry on any occupation, trade or business, and the doctrine of proportionality.
2021	On March 24, 2021, the Ministry of Corporate Affairs released a notification ('MCA Notification') mandating companies to inter-alia make certain disclosures with respect to the virtual currency/cryptocurrency transactions undertaken by them during a financial year.
Present	Parliament has intention of introducing the Cryptocurrency and Regulation of Official Digital Currency Bill, 2021 for deliberations. The objective of the Bill is to create an enabling framework for the official digital currency to be issued by the RBI, and to prohibit all private cryptocurrencies available in India.
	However, more recent news reports indicate a possible softening of stand with statements being made about the government keeping an 'open mind' and adopting a 'calibrated approach' towards digital assets

Taxing Virtual Digital Currency

GST Perspective



Taxing Virtual Digital Currency

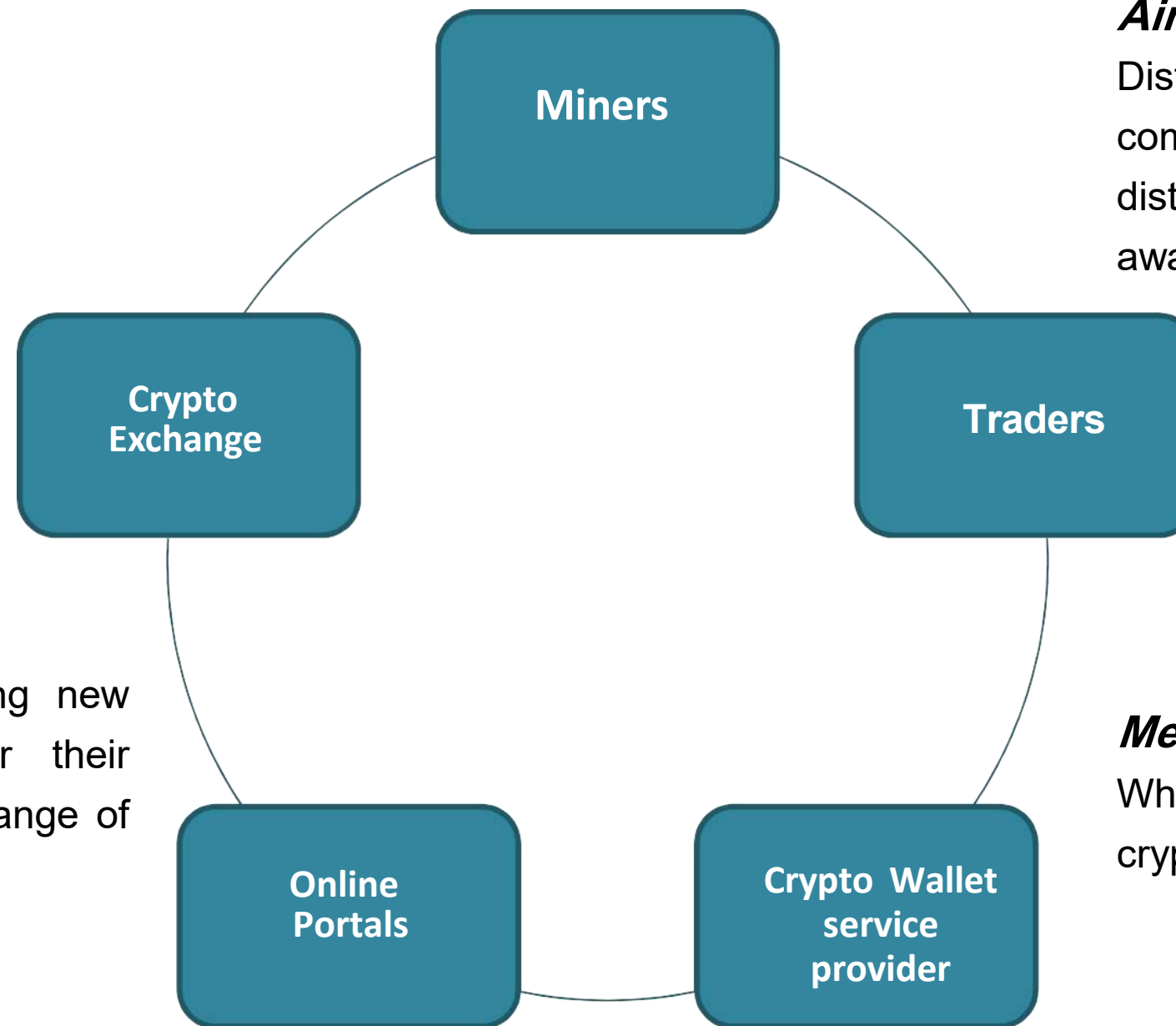
Crypto-Currency Ecosystem

Mining

It refers to confirming and verifying the transaction that takes place on block chain and for such verification / confirmation, cryptocurrency is issued to the miners as an incentive.

Initial token / coin offering

Tokens / Coins issued by companies developing new block chain protocols to raise money or funds for their project. These tokens / coins are issued in exchange of cash or any other existing cryptocurrency.



Airdrops

Distribution of tokens / coins free by new companies in crypto space. These are usually distributed to famous people so that more awareness is generated about new token / coin

Trading of Crypto

Acquiring cryptocurrencies online through cryptocurrency exchange or in a wallet

Medium of Exchange

Where goods and services are exchanged for cryptocurrencies

Taxing Virtual Digital Currency



CRYPTO– Goods or Services ?

Is Crypto Currency *Money* under GST?

The term Money has been defined under section 2(75) of the CGST Act as under:-

Money means the Indian **legal tender or any foreign currency**, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, 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.

Perusal of the term 'Money' evidences that money means legal tender or foreign currency, recognized by RBI.

The term 'Currency' has been defined in Section 2(h) of the FEMA as follows:

"Currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers' cheques, letters of credit, bills of exchange and promissory notes, credit cards or other similar instruments, as may be notified by the Reserve Bank;

Taxing Virtual Digital Currency



CRYPTO– Goods or Services ?

Is Crypto Currency *Securities* under GST?

The CGST Act defines securities under Section 2(101) as **"shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 ("SCRA")**

The term "securities" in the Securities Contracts (Regulation) Act, 1956, has been defined to include—

(i) 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;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable including mortgage debt, as the case may be;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

iii) rights or interests in securities;"

Taxing Virtual Digital Currency



CRYPTO– Goods or Services ?

Is Crypto Currency *Actionable Claim* under GST?

Section 2(1) of the CGST Act read with section 3 of the Transfer of Property Act define “**actionable claim** means a **claim to any debt**, other than a debt secured by mortgage of immovable property or by the hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognises as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent”.

Given that cryptocurrencies do not have a centralized issuing authority which undertakes to repay the value represented by a unit of cryptocurrency, cryptocurrencies clearly do not fall under debt above.

Further, given that cryptocurrencies are themselves likely to qualify as ‘movable property’ (which would typically be in ‘possession’, in the relevant cryptocurrency ‘wallet’), it would be difficult to argue that cryptocurrencies represent claim to a beneficial interest in a movable property which is not in possession.

Also, whether the claim is recognizable in any court as actionable.

Taxing Virtual Digital Currency



CRYPTO– Goods or Services ?

Is Crypto Currency *Goods* under GST?

Arguments for being goods

- Neither money, securities nor actionable claim
- Is a movable intangible property

Arguments Against being goods

- The Hon. Supreme Court, in the case of Delhi Cloth and General Mills. Co. Ltd., [1977 (1) ELT (J199) SC] brought out the marketability, movability and utility test, to categorize an item as 'goods'
- Does it satisfies marketability test – there is a difference between saleable & marketable.
- Can any item not having legal backing be recognised as goods. Any commodity gets its character only when its ownership, use is backed by statue. - Delhi Cloth and General Mills. Vs Joint Secretary (1978) & Amar Lala Vs CCE (2004) – Goods which cannot be sold as per law are not marketable.

Taxing Virtual Digital Currency



CRYPTO– Goods or Services ?

Is Crypto Currency *Service* under GST?

Section 2(102) of the CGST Act defines Service to mean anything other than goods,.....

Arguments for being Services

- Everything other than goods would be a service

Arguments Against being Services

- Which SAC will it get covered 997999?

GST Implications on NFTs

Actor Amitabh Bachchan has paid up GST of Rs 1.09 crore on sale of non-fungible tokens (NFTs) worth Rs 7.15 crore



Taxing Non Fungible Tokens

NFTs – Goods or Services ?

Is NFT Goods under GST?

NFT as securities

- ***Can it be called a share, scrip, stock, etc as per sec 2(h) (i) of SCRA ?***
 - NFTs cannot fall within the meaning of shares, scrips, stocks, bonds, etc. as these are in one way or the other attached to a body corporate for deriving their value.
- ***Can it be called a derivative as per sec 2(h) (ia) of SCRA***
 - Section 2(ac) of the SCRA defines derivatives to include:
 - *a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;*

(cont...)



Taxing Non Fungible Tokens

NFTs – Goods or Services ?

Is NFT Goods under GST?

NFT as securities

- ***Can it be called a derivative as per sec 2(h) (ia) of SCRA***
(cont...)
 - currently, derivative contracts concerning **NFTs are not legally enforceable under Section 18A.** According to Section 18A of a legally enforceable derivative should be traded on a recognized stock exchange, settled by a recognised clearinghouse, or operate on terms notified by the central government. Currently, none of these requirements is fulfilled by NFT transactions.
 - Although NFT transactions can be classified as derivatives, they can be enforceable only if the central government notifies such transactions as valid. **Since NFTs are not currently recognised as derivative by SEBI in India, therefore the same cannot be considered as securities for the purposes of the law.**



Taxing Non Fungible Tokens

NFTs – Goods or Services ?

Is NFT Goods under GST?

Arguments for being goods

- Neither money, securities nor actionable claim
- Reference may drawn to the judgment of Tata Consultancy Services Vs. State of Andhra Pradesh [271 ITR 401 (SC), wherein the constitution bench of Hon'ble Supreme Court held by the majority that the term goods used in the Constitution of India is very wide and under the relevant Act it includes all types of movable properties irrespective of tangible or intangible.
- NFTs are intangible and are made, marketed, and stored on physical servers. They can be bought and sold, transmitted, transferred, delivered, stored, and possessed. Further, the definition of goods includes intangible materials as well, hence NFT may qualify as goods

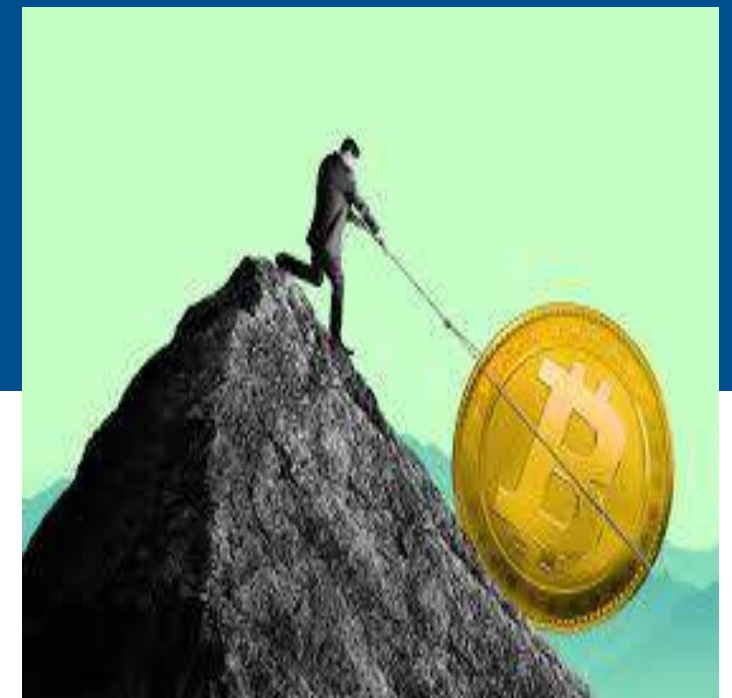


GST Incidence on Virtual Digital Assets Transaction



Taxing VDA Transactions

GST Implications



Mining

- The act of mining could be treated as a supply of service as it generates the VDA & charges transaction fees, and as such, should attract a GST @ 18%.

Trading

- **Crypto Currencies** – If regarded as goods could be taxed at 18% as per entry no. 453 of Schedule III of Notification No. 1/2017-CT(Rate) dated 28th June 2017 & if regarded as service then classifiable under the Heading 9997 'Other Services', taxable @ 18% as per Notification 11/2017-CT(Rate) dated 28th June 2017
- **NFTs** – More appropriately regarded as goods then could be taxed at 18% as per entry no. 453 of Schedule III of Notification No. 1/2017-CT(Rate) dated 28th June 2017 & if regarded as service then classifiable under the Heading 9997 'Other Services', taxable @ 18% as per Notification 11/2017-CT(Rate) dated 28th June 2017



Taxing VDA Transactions

The Way Forward

Taxing VDA Transactions



WAY Forward.....

Media reports suggest that the Central Economic Intelligence Bureau (CEIB) has raised a proposal to the Central Board for Indirect Taxes and Customs (CBIC) to bring cryptocurrency exchanges and platforms under the GST purview.

- ***My Humble Suggestions***

- A new definition be introduced in GST Acts – **Virtual Digital Creations/Items**
- Service Definition be amended to specifically Introduce **Transactions in Virtual Digital Creations/Items**
- Taxing it as Services could bring clarity as : - Issues in classifying goods would be overcome, Export/Import of VDA as goods would pose new challenges, Export/Import of Services is better administered in GST, Time of Supply/Place of Supply are more robust for services
- Notification 11/2017 11/2017-CT(Rate) dated 28th June 2017 be amended to classify these transactions separately by introducing a separate entry.
- Crypto Exchanges & Digital Wallets to register under GST for TCS on transactions through them.

THANK YOU

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