

AMENDMENTS TO FINANCE BILL

Cryptocurrency losses can't be set off

New Delhi, March 24

THE GOVERNMENT WILL clarify that losses from the transfer of a virtual digital asset (VDA), including cryptocurrency, won't be allowed to be set off against the gains arising from the transfer of another VDA. Also, it is set to give a window for firms and other businesses to escape a 50% penalty on the excess tax payable if they had wrongfully claimed health and education cesses as business expenditure in the past. They can voluntarily declare such classification and avoid the penalty.

These amendments are learnt to have been included in the Finance Bill 2022. The amended Bill will likely be



■ FY23 Budget proposed to tax any income from the transfer of virtual digital assets at 30%

■ Govt to give a window for companies and other businesses to escape a 50% penalty on the excess tax payable

■ But only if they had wrongfully claimed health and education cesses as business spend in past

■ Amended Finance Bill to likely be tabled today



tabled in Parliament on Friday.

As the Budget for FY23 proposed to tax any income from the transfer of virtual digital assets at 30%, it also stated the loss from the sale of these assets cannot be set off against any other income. However, some sections

of the crypto trade tended to believe that the gains from a crypto transaction could be offset by losses from another such transaction, but not against any other losses.

Continued on Page 4

FINANCIAL EXPRESS Fri, 25 March 2022

READ TO LEAD <https://epaper.financialexpress.com/c/67020288>



applicable laws, including any pricing guidelines.

"Invesco's objective seeking to convene the EGM was to reconstitute the board, which would mostly be achieved following the Zee-SPNL merger. Further, due to the geopolitical situations most emerging market funds have been impacted, Invesco may have been affected, though I don't have the specifics. But if so, this

might, in part, also explain its decision," Amit Tandon, founder and MD at proxy advisory firm Institutional Investor Advisory Services India (IIAS), said. Incidentally, IIAS had also raised serious corporate governance concerns at Zee. "The EGM demand is infructuous as there would be a new board, with representations from Invesco, once the merger is approved," an analyst said.

derivatives. On the other hand, institutional players like Alternative Investment Funds (AIFs), and mutual funds are currently allowed to participate in the commodity markets.

Sebi further stated that each option expiry should have minimum three strikes — one each for In the Money (ITM), Out of the Money (OTM), and At the Money (ATM). Furthermore, the size of the contract should be at least ₹5 lakh at the time of introduction in the market, the circular said. Trading hours of the options on the commodity indices will be similar to trading hours of the constituent futures of underlying index, and the expiry date can be set by the exchanges, Sebi said.

Amended Finance Bill: Crypto losses can't be set off

Minister of state for finance

Pankaj Chaudhary told Parliament recently the government will come out with a clear definition of VDA for tax purpose. He added that infrastructure cost incurred in the mining of VDAs, including cryptocurrencies, will not be allowed as deduction by the taxman.

The Finance Bill 2022, as tabled in the House on the Budget day, had proposed a retrospective disallowance of deduction for surcharge or cess under Section 40(a)(ii) with effect from assessment year 2005-06. "The new amendment provides an opportunity to taxpayers to seek non-levy of any penalty by making a claim to the assessing officer requesting for recomputation of total income without allowing surcharge or cess as an expenditure. The form and timeline for making such a claim will be prescribed in due course of time," said Sandeep Jhunjhunwala, partner, Nangia

Andersen LLP. Health and education cess is levied at the rate of 4% on income taxes.

EY India tax leader Sudhir Kapadia said the number of companies who could have claimed the cess and surcharge as business expenditure won't be very large. In the provision that stated that no set-off of loss from transfer of the VDA shall be allowed against income computed under any 'other' provision of I-T Act to the assessee, the word 'other' has been dropped to remove any ambiguity and litigation. "Disallowance of trading loss in VDAs seems to be unnecessarily burdensome. The logic is a bit difficult to understand. This provision may be to dissuade people from entering this business rather than raise revenues for the government," Kapadia said.

Jhunjhunwala added that the proposed amendment on taxation of VDS could possibly lead to transactions in VDA being subject to TDS or TCS under provisions other than Section 194S and Section 194-O, thereby leading to double taxation.

Chaudhary told Parliament recently the government will come out with a definition of VDA for tax purpose. He added that infrastructure cost incurred in the mining of virtual digital assets including cryptocurrencies will not be allowed as deduction by the taxman.

The Budget also said a 1% TDS (tax deducted at source) will be applicable on payments made on the transfer of digital assets.



FinMin proposes tighter crypto taxation regime

Part of 39 amendments proposed in the Finance Bill, 2022

New Delhi, 24 March

The government on Thursday proposed to tighten the norms for taxation of cryptocurrencies by disallowing set-off of any losses with gains from other virtual digital assets (VDAs). This was part of the 39 amendments proposed by the government to the Finance Bill, 2022.

Finance Minister Nirmala Sitharaman is expected to move an amendment on Friday, clarifying that no tax deduction or set off would be available in place of mining cost of crypto assets and other VDAs or losses from their transfer.

Besides, all "transfers" of VDAs or crypto assets would be covered

TIGHTENING THE SCREWS

▶ Disallowing set-off of any losses with gains from other virtual digital assets

▶ VDA transfers will be covered, irrespective of whether they were a capital asset or not

▶ Finance Minister Nirmala Sitharaman is expected to move amendments today

▶ Other amendments like Education cess and Customs Act are also likely to be tabled



under the proposed 30 per cent tax, irrespective of whether they were a capital asset or not. Also, only the proposed rate of tax deducted at source (TDS) would be applicable to VDA transactions, and not the rate

under any other provision.

The Union Budget 2022-23 had proposed taxing crypto assets at the rate of 30 per cent, effective from April 1.

Turn to Page 6 ▶

rently, at least 15-16 advertise their products, which is the key source of revenue. Earlier, many had expressed doubts whether such a disruptive e-commerce model could work for small scale businesses. Meesho's co-founder and CEO Vedit Aatrey told Business Standard in an interview that the platform is already available in 98 per cent of all pin codes. Its focus, he said, is on below Tier 1 companies and it is aiming to hit 100 million monthly active users on its platform by December.

A striking feature is that 50 per cent of Meesho's customers are first time users online. The company has expanded its product profile in the last nine months to include sportswear, pet foods, and products for men and more recently to make an entry into groceries.

FinMin...

It also proposed 1 per cent TDS on payments towards virtual assets beyond ₹10,000 in a year and taxation of such gifts in the hands of recipients. The TDS provision will come to effect from July 1. The Finance Bill is expected to be taken up in the Lok

Sabha for discussion and passage on Friday.

The meaning of the "transfer" was unclear in the Bill as the definition of the term provided under Section 2(47) applied only in relation to capital assets.

The proposed amendment now seeks to clear the ambiguity by inserting a subsection which applied the 2(47) definition to the transfer of VDAs, irrespective of whether they are construed as capital assets or not, explained Sandeep Shunhijwala, partner, Nangia Andersen LLP.

The amendment followed a clarification by Pankaj Chaudhary, minister of state for finance, that loss from sale of one crypto would not be set off against the gain from the sale of another crypto. Further, while computing the income from such a transfer, no deduction in respect of any expenditure (other than the cost of acquisition) or allowance is allowed.

Amendment in Customs Act

The Finance Bill had proposed to insert a new Section 135AA in the Customs Act which stated: "If a person publishes any information

relating to the value or classification or quantity of goods entered for export from India, or import into India, or the details of the exporter or importer of such goods under this Act, unless required so to do under any law for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ₹50,000, or with both". The amendment now seeks to remove the six-month imprisonment and ₹50,000 penalty.

Education cess

The Finance Bill, 2022 had proposed a retrospective disallowance of deduction for surcharge or cess under Section 40(a)(ii) with effect from AY2005-06. Doubts had been raised by taxpayers over the potential impact on past claims and risk of penalty on account of the amendment.

An amendment has been proposed in the Finance Bill, 2022 which has the effect of providing that deduction of surcharge or cess which has been claimed and allowed to the taxpayer will be deemed to be under-reported income and thus be subjected to a 50 per cent penalty.

Deduction claimed for cess, surcharge to be treated as ‘under-reported’ income

By Anshu Mishra

The Finance Ministry has proposed that deduction claimed for cess and surcharge under the Income Tax Act will be treated as “under-reported” income. Taxpayers who claimed the provision said this will invite penalty in the case of 50 per cent.

These proposals are through a new clause as part of the official amendment to the Finance Bill, 2021. Finance Minister Nirmala Sitharaman will move the official amendment when the Finance Bill, 2021 is tabled on Friday after which it will be taken up for consideration and passage in Parliament. The amendments, uploaded on the portal for MPs, have been perused thoroughly by their ministers.

One amendment relates to the proposal to insert a new clause to amend Section 135 of the Income Tax Act. The clause

says: “When any deduction in respect of any surcharge or cess, which is not a allowable as deduction under Section 40, has been claimed and allowed in the case of an assessee in any previous year, such claim shall be deemed to be under-reported income of the assessee.”

‘Under-reported’ income

According to Chartered Accountant Vaid Jain, once declared “under-reported”, the total income will be recomputed and the assessee will have to pay tax along with interest and penalty. However, the proposed clause provides for not being tagged as “under-reported” if an assessee makes an application to the assessing officer for recomputation of the total income without allowing the claim for deduction of surcharge or cess.

Sandeep Sehgal, tax partner

THE FINE PRINT

- Amendment to Finance Bill inserts a new clause to Section 135 of the IT Act: “When any deduction in respect of any surcharge or cess, which is not allowable as deduction under Section 40, has been claimed and allowed in the case of an assessee in any previous year, such claim shall be deemed to be under-reported income”
- If declared ‘under-reported’, total income will be recomputed and the assessee will have to pay tax, interest and penalty
- The amendment will take effect retrospectively from April 1, 2005 and will apply to the assessment year 2005-06 and thereafter



with AKM Global, said through this amendment, the IT Department has put the onus on the taxpayer to self-compute the income and to disclose the cess/surcharge, if any claimed. “The taxpayer shall be required to pay the tax and interest on the amount of the reversal, if not

complied with, the Tax Department will consider it a fit case for levying penalty at 50 per cent of the amount of the tax benefit so claimed,” he said. This new amendment has been proposed to prescribe conditions for defining under-reported income.

“The amendment will take ef-

fect retrospectively from April 1, 2005 and will accordingly apply in relation to the assessment year 2005-06 and subsequent assessment years,” says the Finance Minister.

Sandeep Jhurijewala, Partner with Nanga Anderson LLP, said the new proposed clause defines under-reported income in case of cess and surcharge claimed as deduction.

“It seems that pending claims in appeals may not be subject to penalty as they have not been allowed to the taxpayers yet. The amendment also provides an opportunity to taxpayers to seek remedy of any penalty by making a claim to the assessing officer requesting for recomputation of total income without allowing surcharge or cess as an expenditure. The time and timeline for making such a claim will be prescribed in due course of time,” he said.



The proposed amendments include clarifications to proposals including those on disallowance of cess.

MINT

Centre proposes 39 amendments to Finance Bill

NEW DELHI: The government has proposed as many as 39 amendments to Finance Bill 2022, clarifying the legislative proposals regarding tax laws, which will be taken up when the Bill will be moved for passage in the House.

The proposed amendments include clarifications to proposals including those on disallowance of cess and surcharge as deductions and on virtual digital assets. Mint has seen a copy of the amendment proposals which has been circulated among Parliamentarians and is expected to be considered along with the Finance Bill for passage.

Lok Sabha schedule showed that business that could not be taken up on Thursday will be considered on Friday. Lok Sabha on Thursday passed the Appropriation Bill, 2022 authorising government spending for the financial year starting April.

Experts said that a clarification on disallowance of cess and surcharge as a deduction is a welcome one and will help in

reducing litigation. In the Finance Bill, the government had sought to correct what it regarded as an anomaly arising from some court rulings over the years which allowed tax payers to claim cess payments as an expenditure. This correction was done with retrospective effect, which caused concern among businesses as the proposal entailed a penalty of 50% of the amount of tax saved by claiming deduction of cess.

"If a tax payer, based on revised computation, pays the tax and interest due, then there will not be any penalty. This is a welcome clarification as the earlier proposal would have otherwise gone into litigation. The change removes this uncertainty and clarifies that there is no penalty if the tax payer makes good the tax payment," explained Sudhir Kapadia, National Tax Leader, EY.

Sandeep Jhunjhunjwala, partner at Nangia Andersen LLP, a consultancy, explained that Finance Bill 2022 had proposed a retrospective disallowance of deduction for surcharge or cess with effect from 2005-06.