

GOVERNMENT OF INDIA
MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY
RAJYA SABHA
STARRED QUESTION NO.*321
TO BE ANSWERED ON: 31.3.2023

STATUS OF NFTs

***321. DR. PRASHANTA NANDA:**

Will the Minister of ELECTRONICS AND INFORMATION TECHNOLOGY be pleased to state:-

- (a) the current status of the Non-Fungible Tokens (NFTs) under the Information Technology Act;
- (b) the timeframe within which a body of regulations would be tabled and subsequently be open for public inputs; and
- (c) the Ministry and Department which would seek to regulate NFTs?

ANSWER

MINISTER FOR ELECTRONICS AND INFORMATION TECHNOLOGY
(SHRI ASHWINI VAISHNAW)

(a) to (c): A Statement is laid on the Table of the House.

(a) to (c): Non-fungible tokens are also referred to as virtual digital assets. The Finance Bill, 2022 proposed a new scheme to provide for taxation of virtual digital assets. As per the amendments effected to the Income-tax Act, 1961 (administered by the Ministry of Finance, Department of Revenue) by the Finance Act, 2022, “virtual digital assets” is defined to mean any information or code or number or token (not being Indian 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. It also includes non-fungible token and any other token of similar nature. Section 115BBH of the Income-tax Act provides that where the total income of an assessee includes any income from transfer of any virtual digital asset, the income-tax payable shall be the aggregate of the amount of income-tax calculated on income of transfer of any virtual digital asset at the rate of 30% and the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the aggregate of the income from transfer of virtual digital asset. Further, section 194S to the Income-tax Act provides for deduction of tax on payment for transfer of virtual digital asset to a resident at the rate of 1% of such sum. Also, the explanation to clause (x) of sub-section (2) of section 56 of the Income-tax Act has been amended to include virtual digital asset within the meaning of the word “property”.

Further, on 7.3.2023, the Central Government, in exercise of powers conferred by the Prevention of Money Laundering Act, 2002 (also administered by the Ministry of Finance, Department of Revenue), has notified that a person who carries on an activity of exchange between virtual digital assets and fiat currencies, exchange between one or more forms of virtual digital assets, transfer of virtual digital assets, safekeeping or administration of virtual digital assets or instruments enabling control over virtual digital assets and participation in and provision of financial services related to an issuer’s offer and sale of a virtual digital asset as activities shall be a person carrying on designated business or profession for purposes of the Act. Such a person is a reporting entity under the Act and has obligations for verification of identity, maintenance of records and enhanced due diligence.

As per the directions dated 28.4.2022 issued by the Indian Computer Emergency Response Team (which is established by the Ministry of Electronics and Information Technology) under sub-section (6) of section 70B of the Information Technology Act, 2000, on information security practices, procedure, prevention, response and reporting of cyber incidents, virtual asset service providers and virtual asset exchange providers shall mandatorily maintain all information obtained as part of Know Your Customer (KYC) and records of financial transactions for a period of five years, so as to ensure cybersecurity in the area of payments and financial markets for citizens, while protecting their data, fundamental rights and economic freedom.
