



Income Tax Act 1961 V/S Direct Tax Code 2009

KEYWORDS

Tax System and History, History of Income Tax Act 1961, Direct Tax Code 2009, Income Tax Act 1961 V/s Direct Tax Code 2009

Sanjay K. Radadiya

Assi. Professor M.Com., D.T.L.P., C.A. (Inter) Shri Patel Kelavani Mandal College of Tech. & B.Ed. - Junagadh

ABSTRACT

"It was only for the good of his subjects that he collected taxes from them, just as the Sun draws moisture from the Earth to give it back a thousand fold" Kalidas in Raghuvansh eulogizing KING DALIP. | Taxation of income in India, till now, is governed by the fifty years old Income Tax Act (IT Act) which came into legislation in 1961. But this Act has been criticized for being economically inefficient, incompatible with the current requirements and inequitable to all tax payers. It was neither cost effective nor was able to encourage voluntary compliance. So, in August 2009, the Ministry of Finance came out with the draft of Direct Tax Code (DTC) bill with the purpose of replacing the existing IT Act. It will be a key tax reform by the government aiming at widening and deepening the tax net; and increasing tax revenue.

Introduction:

One of the most critical drafts of Indian statutes was Income tax Act, 1961. In order to simplify the current tax structure government of India comes with a proposal of introduction of Direct Tax Code (DTC).

The new Tax draft has given Common man more than what he had expected; it is not only beneficial to individual tax payer, but also corporate houses and foreign houses. There is a drastic reduction (at least, it looks like that prima facie) on the amount of taxes most of the employed people will pay going forward.

"When archaic rules have to be replaced with new ones, the changes must be dramatic and path breaking."

- Union Finance Minister Pranab Mukherjee

Tax system and History:

India has a well developed tax structure. The power to levy taxes and duties is distributed among the three tiers of Government, in accordance with the provisions of the Indian Constitution.

The main taxes/duties that the Union Government is empowered to levy are:- Income Tax (except tax on agricultural income, which the State Governments can levy), Customs duties, Central Excise and Sales Tax and Service Tax. In the wake of economic reforms, the tax system in India has under gone a radical change, in line with the liberal policy. Some of the changes include:- rationalization of tax structure; progressive reduction in peak rates of customs duty ; reduction in corporate tax rate; customs duties to be aligned with ASEAN levels; introduction of value added tax ; widening of the tax base; tax laws have been simplified to ensure better compliance. Tax policy in India provides tax holidays in the form of concessions for various types of investments. These include incentives to priority sectors and to industries located in special area/ regions. Tax incentives are available also for those engaged in development of infrastructure. Taxes are the key source of Income for a nation; tax administration is one of the toughest jobs for a government and that too for a nation like India which is divided in all sort viz., geographical distribution, population distribution, income distribution etc.

Income Tax Act 1961:

The brief history of taxation in Great Britain would show that when the British took over control and administration of British India after the freedom of 1857, they had before them a long experience of various tax laws being administered in Great Britain. It was but obvious that in introducing the income tax in this country, the British officers would depend upon and draw largely from in the parent country's experience in tax laws and administration thereof.

Income-tax was first introduced in India in 1860 by James Wilson who became India's first finance member. This became necessary since suppression of freedom movement of 1857 entailed very heavy expenditure and made a large addition to the public debt. In 1856-57, military expenditure which was only Rs. 17 Crores increased to Rs. 32 crores in 1858 -59. This increase was on account of recruitment of more European soldiers and officers in the army. The present Income Tax Act was enacted in 1961, which come into force on 1st April, 1962.

New Direct Tax Code 2009:

India's emergence as a global economic power has helped inward investment and domestic business activity to soar. Cumulative foreign investment topped \$169bn in the last decade – investment which came despite the country's dated and complex tax system. Indeed, India's tax legislation has caused much concern for domestic and foreign business. In an effort to address this, the Government of India has initiated a significant overhaul with the creation of the Direct Tax Code (DTC).

Objective:

The Direct Tax Code seeks to consolidate and amend the law relating to the direct taxes, which consists of Income Tax, Dividend Distribution Tax, Fringe Benefit Tax and wealth Tax so as to enable to establish an economically efficient, effective and equitable direct tax system which will facilitate voluntary compliance and help increase in the tax GDP ratio. Another objective is to reduce the scope for dispute and minimise litigation.

Income Tax Act 1961 V/s Direct Tax Code 2009

Income Tax Act, 1961 Direct Tax Code Bill, 2009

1	At present there are two legislation i.e. Income Tax Act, 1961 and Wealth Tax Act, 1957.	Single code for Income Tax Act and Wealth Tax Act. The code consists of 285 sections.
2	There are three kind of Residential status i.e 'Resident', 'Non Resident' and 'Resident but not Ordinarily Resident'.	Residential status of "Resident but not ordinarily resident" has been done away with.

3	There are 'previous year' and 'assessment year'.	To eliminate confusion only 'Financial Year' will prevail.
4	Date of filing of tax return 31st July for non-business non-corporate assessee and 30th Sept for others.	Date of filing of tax return preponed to 30th June for non-business non-corporate assessee and 31st Aug for others.
5	Individual tax rates in Income Tax Law (ITL) are as follows	Individual tax rates proposed in Direct tax code (DTC).
	10% from Rs.160000 to Rs.300000	from Rs.160000 to Rs.1000000
	20% from Rs.300001 to Rs.500000	from Rs.1000001 to Rs.2500000
	30% from Rs.500001 and above	from Rs.2500001 and above
6	The corporate tax rate of domestic company is 30% and for foreign company, it is 40%. Business losses can be carry forward for 8 yrs. Dividend distribution is at 15%.	The corporate tax rate of all companies reduced to 25%. Business losses can be carry forward for unlimited period. Dividend distribution tax remains at 15%.
7	Wealth tax rate is 1% above Rs.30 lacs. Definition of wealth includes some specific assets excluding investments in shares. It was applicable to all assessee.	Wealth tax rate reduced to 0.25% above Rs.50 crore except for private discretionary trust, for which no threshold limit will be available. Definition of wealth has been expanded to include all assets, including investments. Further corporate assesses have been relieved from wealth tax.
8	MAT @ 15% is levied on 'Book Profit'. Further MAT tax credit is allowed to be carried forward up to ten assessment year.	Basis for levy of MAT is 2% on gross assets. Carry forward of such MAT tax credit has been denied.
9	There is no such provision for to declare an arrangement as impermissible.	General Anti-Avoidance Rule to introduce to empower the Commissioner of Income Tax (CIT) to declare an arrangement i.e round-tripping, transaction through an intermediaries, self-canceling transaction etc as impermissible if the same has been entered into with the objective of obtaining tax benefit and which lacks commercial substance. Such arrangement can be invoked by CIT.
10	Tax incentives were based on location or on export turnover upto a specified period. Further capital investment were not allowed to amortized.	Export and Area/profit based exemption to be discontinued without affecting currently enjoying such incentive. Under the DTC, all capital investment and revenue expenditure (except land, goodwill and financial instruments) allowed to be amortized indefinitely and the period of such amortization will be called as 'Tax Holiday'.
11	Income from Salary includes all perquisites such as house rent, leave travel assistance, children education allowances, encashment of unavailed earned leave on retirement, medical reimbursement and free/concessional medical treatment paid/provided etc is exempt up to a certain limit.	All such exemption withdrawn.
12	As per section 80C certain investment/savings upto Rs. 1 lac were deductible from taxable income.	Exempt-Exempt-Taxation (EET) method of taxation of savings/investment, will be applied on new contribution after commencement of the code. Limit for investment raised to Rs.300000 p.a. However deduction on investment in tax-saving mutual funds and fixed deposits have been abolished.
13	Self-occupied house property whose gross rent is taken as NIL, used to get deduction of interest on loan. Deduction for repair based on annual value in case of rented house property is 30%.	Self-occupied house property whose gross rent is taken as NIL, will not get deduction of interest on loan. Deduction for repair on annual value in case of rented house property is proposed to reduce to 20%.
14	Short term capital gain which attracts STT is taxed at 15%, Short Term Capital Gain which does not attract STT attract normal rate of tax. Long Term Capital Gain, which attracts STT, is exempt from Tax. Long Term Capital Gain which does not attract STT is subject to a tax rate @ 10% without indexation or 20% with indexation. Unabsorbed capital loss allowed to be carried forward up to 8 assessment years.	Since STT proposed to abolish, short term and Long term capital gain will form part of income, therefore all capital gain on transaction of equity shares/unit will attract normal tax. However indexation benefit of long-term capital gain will remain. Unabsorbed capital loss will be allowed to be carried forward indefinitely.
15	As per Income Tax Act, 1961 the assessing officer is never required to forward a draft order of assessment. Maximum amount of penalty is 300% of the amount of tax, but the same AO can waive the penalty. Appeal can be filed before ITAT against an order passed by the CIT directing revision of assessment. The appeal against ITAT order is eligible to be filed in the High Court.	The assessing officer is required to forward a draft of the proposed order of assessment in case the variation to the returned income is in excess of prescribed limit. Maximum penalty for willful under-reporting of tax can be 200% of tax but no income tax authority shall have the power to waive penalties. No appeal shall lie to the ITAT against an order passed by the CIT directing revision of assessment. The appeal against ITAT order lies with National Tax Tribunal and not High Court.
16	There is no such provision for upfront determination of the arm's length pricing or pricing methodology.	Transfer Pricing matter will be well settled under proposed Advance Pricing Agreement (APA), under which an agreement between the taxpayer and the tax authorities for the upfront determination of the arm's length pricing/pricing methodology of an international transaction will be made but shall not be effective for more than five consecutive years.
17	As per Income Tax Act, 1961 there is no such provision.	Every business will constitute a separate source and will be computed separately.
18	As per Income Tax Act, 1961 loss on Sale of business capital assets will be treated as Short term capital loss and will be allowed to be carried forward up to 8 eight assessment year.	As a disincentive to asset stripping and loss manipulation, the loss on sale of business capital assets will be treated as intangible asset and depreciation will be allowed at the same rates applicable to the relevant block of assets, therefore allowing a fraction of the loss every year.
19	There is Provision of choice between Income Tax Act and Double Taxation Avoidance Agreement; whichever is beneficial to the assessee.	The code states that neither a Double Taxation Avoidance Agreement (DTAA) nor the code shall have a preferential status by reason of its being a DTAA or law. However in case of a conflict between the code and DTAA, the one that is later in point of time shall prevail.
20	Presumptive tax system wherein assuming 8% of turnover as taxable profit were available to retail business having turnover upto Rs.40 lakhs.	The limit of turnover for such presumptive tax system for retail business is raised to turnover upto Rs.100 lakhs.
21	Carry forward and set-off of losses of unlisted companies in the hands of amalgamated company will lapse with change in shareholding of 50% or more.	Such carry forward and set-off of losses will not lapse even with change in shareholding of 50% or more.

Conclusion:

At this point in time, it is difficult to draw any firm conclusions about the DTC, given that it is not due to be introduced until April 2012. The aim of the DTC is to simplify tax legislation in part to attract foreign business and investment. While the Code's streamlined provisions may well achieve this, given the scope of the legislation's proposed anti-avoidance measures, companies and investors

may face further uncertainty in relation to tax in the future. Finally, consideration should be given to considering certain actions or modifying or unwinding structures prior to the DTC taking effect in the event that a review highlights that existing arrangements may lead to adverse consequences in the future." Income Tax Act 1961 will soon be history. Direct Taxes Code will rule our lives and money now.