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AN APPRAISAL OF NEW DIRECT TAX CODE IN INDIA: A NEW CHALLENGE IN DIRECT TAXATION

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ABSTRACT

The new Direct Tax Code to be introduced from the financial year,2012-13 replacing the five decade old Income tax Act,1961 has the objective to make the Indian tax structure straightforward and to consolidate, amend the law relating to all direct taxes, namely, income-tax, dividend distribution tax, fringe benefit tax and wealth-tax so as to establish an economically efficient, effective and equitable direct tax system which will facilitate voluntary compliance and help increase the tax-GDP ratio. In this article, an attempt has been made to evaluate the new direct tax code promulgated by India govt. Even though, the basic aim behind Direct tax code is simple and helpful to the people, it is very much criticized because many provisions under this proposal may harm the investors, taxpayers, and Foreign Institutional Investors.

KEYWORDS

Direct Tax, Tax structure, Tax code, Taxpayers.

INTRODUCTION

Of late, Income Tax department of India has put the new proposal for direct tax in front of Government of India and Government has unveiled the draft of a brand new direct tax law, which will replace the five-decade old Income-Tax Act .This is known as Direct Tax Code (DTC). The aim of New Direct Tax Code (DTC) is to make the current tax structure in India straightforward. An important part of the budget every year has been the detailing of the tax rates. However, with the introduction of the new direct tax code, the tax rates will not be part of the budget presented to Parliament every year.

The new code will completely overhaul the existing tax proposals for not only individual tax payers, but also corporate houses and foreign residents. It has been drawn with inspiration from the prevailing tax legislation in US, Canada and UK. It is a topic of interest and a matter of concern for every taxpayer in India. India wants to modernize its direct tax laws, mainly its income tax act which is now nearly 50 years old. The government needs a modern tax code in step with the needs of an economy which is now the third largest in Asia. The new tax code is expected to widen the tax base, end unnecessary exemptions, moderate tax rates and add to the government's coffers.

The direct tax code seeks to consolidate and amend the law relating to all direct taxes, namely, income-tax, dividend distribution tax, fringe benefit tax and wealth-tax so as to establish an economically efficient, effective and equitable direct tax system which will facilitate voluntary compliance and help increase the tax-GDP ratio. Another objective is to reduce the scope for disputes and minimize litigation. It is designed to provide stability in the tax regime as it is based on well accepted principles of taxation and best international practices. It will eventually pave the way for a single unified taxpayer reporting system.

The Code shall replace the five-decade old Income-tax Act ('the Act') from FY 2011 onwards, and true to its promise, proposes to make sweeping and radical changes to the taxation framework in India. There are many features of the Code such as rationalization/reduction of tax rates, removal of profit based exemptions to introduce investment based exemptions, EET scheme of taxation for savings instruments, introduction of general anti-avoidance measures, so on and so forth. The overall objective is that a plethora of exemptions will be limited. Income tax slabs will be three. Rate of taxes will be taken in the schedule so that they need not be changed every year.

In this article, an attempt has been made to evaluate the new direct tax code promulgated by India govt. which will come into effect from 1.4.2012.

RATIONALE BEHIND INTRODUCING DIRECT TAX CODE

The economic reform which was initiated in nineties was restricted to financial, insurance, industrial licensing sectors, etc. and particularly, both the direct and indirect taxes were kept out of it. However, looking to the steps unfolded in the last one year, it becomes visible that it is gathering momentum. Sales tax has been replaced with Value Added Tax (VAT). Discussion for replacing Central Excise and VAT with Goods and Services Tax (GST) is at an advance stage of finalization. With the release of the Discussion Paper (DP) and draft Direct Taxes Code (DTC), the process of reform in Direct Taxes (DT) has already been commenced. Thus, there appears to be a committed movement on the part of the policy-makers to initiate the reform process in both the types of taxes, *i.e.,* direct and indirect.

One of the major areas of reform under the direct tax is with respect to pruning of exemptions and deductions granted while computing taxable income. During the last fifty years, number of exemptions and deductions has been increasing which results in taxing artificial income. In the last five years, there has been increasing awareness amongst the policy-makers about the cost of such exemptions and deductions. It is being felt that the revenue foregone in the process of granting exemptions and deductions is nothing but an expenditure which is named as 'Social Expenditure'. Since the last few years, the Budget Documents placed before the Parliament, contains a detailed list of various sections of direct and indirect taxes under which revenue foregone is quantified. The DP carries a detailed discussion about it and justifies the proposal for the removal of exemptions and deductions. A glance at a table contained in the Budget Documents for the year 2008-09 will show that in the case of Individual taxpayers, total loss of revenue under section 80C of the Income-tax Act, 1961 is Rs. 27,389 crores which is a fairly large amount.

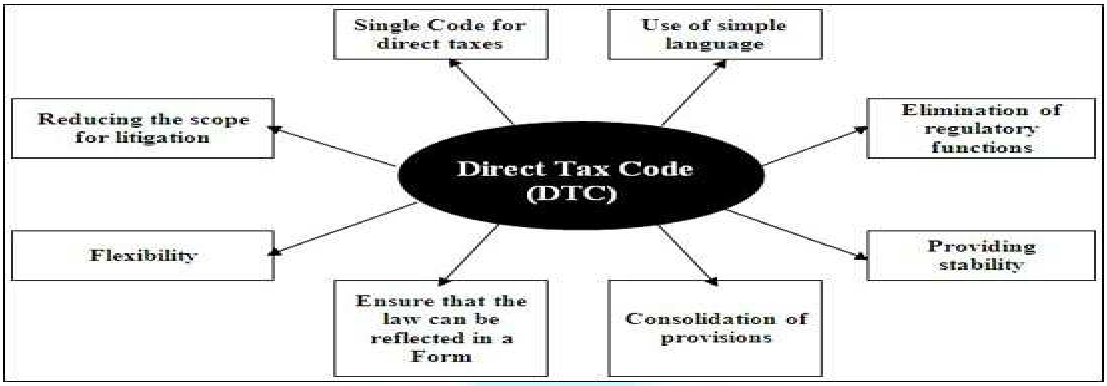
In view of the above discussion, the rationale behind replacing the ITA with the DTC, as per the authorities, was that the existing Act passed way back in 1961 had undergone numerous amendments over the years. This, in turn, rendered the legislation extremely complex and incomprehensible to the average taxpayer.

Besides, there had been frequent policy changes due to changing economic environment, complexity in the market, increasing sophistication of commerce, development of information technology and attempts to minimize tax avoidance. The problem was further compounded by a multitude of judgments (very often conflicting) rendered by the courts at different levels. The DTC was a solution expected to result in a higher tax-GDP ratio, reduce compliance costs, lower administrative burdens, discourage corruption and most importantly improve equity (both horizontal and vertical).However, the Bill (after several revisions of the original) that was finally presented in the Lok Sabha has turned out to be nothing but old wine in a new bottle. There have been significant departures and dilutions from the radical changes that were originally proposed. Even now it is not final. The next step will be to place it before a parliamentary select committee that will recommend changes based on the views and feedback received from various stakeholders.Therefore, as things stand, the DTC will only come into force from April 1, 2012, and the first return of income under its provisions will only be filed for income pertaining to Financial year, 2012-13. Although, some experts and social activists have criticized this move in government as pro-rich, Direct Tax Code(DTC) is intended to provide some much-needed relief to middle-class families**,** especially people belonging to higher income brackets**.**

DISCUSSION AND ANALYSIS

SALIENT FEATURES OF THE PROPOSED DIRECT TAX CODE

The Code is a sincere attempt towards simplifying the direct tax laws in India. The language used in the Code is much simpler than the existing Act and leaves very little scope for varied interpretations. While, it will take some time before the Code can be fully understood and analyzed in-depth, it seems that the stated objectives will be met. The salient features of the Code are presented through a pictorial presentation below.



GENERAL CONCEPTS

•The Direct Tax Code to be effective from April 1, 2012.
• Proposed bill has 319 sections and 22 schedules against 298 sections and 14 schedules in existing IT Act.
• Concept of "Assessment Year" and "Previous Year" proposed to be done away with to mitigate confusion and a new unified concept of "Financial Year" to be introduced and the Code proposes that every person shall be liable to pay income-tax in respect of the total income for the financial year.
• Due date for filing of Income tax return:
* For Corporate and assesses liable get their books of account audited under the Code proposed to be August 31every year.
* Individuals and other non audit cases proposed to be June 30 every year.
• No surcharge or education cess on any income taxable under the Code.
• Income to be now classified under two broad categories
* Income from special sources; and
* Income from ordinary sources.
• Income from special sources to include income taxable at special rates like income of non-residents, winning from lotteries and horse races etc.
• Income from ordinary sources to include:
* Income from employment;
* Income from house property;
* Income from business;
* Income from capital gains; and
* Income from residuary sources.

RATES OF TAX

India is a country having mostly middle income group people and has an oriental Tax Regime since before introduction of DTC bill 2010.Being 3rd Largest Economy in Asia and Emergent Global Economy, Tax- GDP ratio has increased from 2.97 at the beginning of this decade to 6.45 percent in 2009-2010. In India, 95.75 % of tax payers are in 1- 5 lacs income group and 2% of tax payers are in 5-8lacs income group ;2.2% of tax payers are in greater than 8 lacs income and New Tax Code aimed at benefiting 1-5 Lacs slab Significantly.

The most striking feature is the rationalization level of tax slabs at various levels. The proposed slabs suggest a major overhaul in the intent of CBDT (Central Board of Direct Taxation). A glimpse of the intended structure has already been seen in the Union Budget 2010 wherein the tax slabs have been liberalized to a great extent. The so-called Direct Tax Code, which is scheduled to come into force from financial year 2012-13, i.e. from April 1, 2012, had prescribed removal of almost all tax rebates in individual investments but also proposed raising the income limits for various tax slabs drastically. The following is the comparison of income tax which the assessee will be paying for this financial year and the next financial year when new direct tax code is implemented.

TABLE 1: INCOME TAX SLAB FOR THE ASSESSMENT YEAR 2011-12 AND FINANCIAL YEAR 2012-13 (NEW TAX: CODE) COMPARISON

Income Tax Slabs for Resident Senior Citizens			
S. No.	**Tax percentage**	**AY 11-12 / FY 10-11**	**FY 12-13**
1	No tax / exempt	Up to 2,40,000/-	Up to 2,50,000/-
2	10%	2,40,001/- to 5,00,000/-	2,50,001/- to 5,00,000/-
3	20%	5,00,001/- to 8,00,000/-	5,00,001/- to 10,00,000/-
4	30%	Above 8,00,000/-	Above 10,00,000/-
Income Tax Slabs for Others and Men & Women			
S. No.	**Tax percentage**	**AY 11-12 / FY 10-11(Income Tax Act,1961)**	**FY 12-13(DTC,2011)**
1	No tax / exempt	Up to 1,60,000/-	Up to 2,00,000/-
2	10%	1,60,001/- to 5,00,000/-	2,00,001/- to 5,00,000/-
3	20%	5,00,001/- to 8,00,000/-	5,00,001/- to 10,00,000/-
4	30%	Above 8,00,000/-	Above 10,00,000/-
Abbreviations: *AY:- Assessment Year, FY :- Financial Year.*			

On going through the above proposed amendments, proposed by the government, it looks pretty clear that it is nothing but a cosmetic change, and one can even go to the extent to say that the Direct Tax Code is more of a bane than a boon, since people earning at the higher end of the spectrum of the tax slab have never been the biggest contributors towards the exchequer, since they form a very small chunk of the Salaried Employee's matrix.

Therefore, Income tax exemption limit has been proposed at Rs. 2 lakh per annum, up from Rs. 1.6lakh and 10 per cent tax on annual income between Rs. 2-5 lakh, 20 per cent on between Rs. 5-10 lakh, 30 per cent for above Rs. 10 lakh. It has been calculated that tax burden of assessee having income upto 10lakhs will come down by Rs. 41,040 annually. Proposal has been made to raise tax exemption for senior citizens to Rs. 2.5 lakh from Rs. 2.4 lakh . The Code is likely to significantly benefit the salaried class employees, working on a cost-to-company pay-package (which is the widely accepted practice in India). However, the government/ public sector employees could be adversely hit by these provisions, given that they are used to getting a number of tax-free perquisites/allowances. The new slabs promote gender equality by discontinuing the higher exemption hitherto available to ladies and therefore, currently nothing is mentioned about tax exemption to women in proposed bill.

TABLE 2: CORPORATE TAX RATE UNDER NEW DIRECT TAX CODE

Particulars	Income Tax Act, 1961	Original DTC	Revised DTC
Domestic Company	33.22%	25%	30%
Foreign Company	42.23%	25%	30%
Branch Profits Tax	-	15%	15%
MAT	19.93% on Book Profits	0.25% / 2% of Gross Assets	0.25% / 2% of Gross Assets
Dividend Distribution Tax ("DDT")	16.61%	15%	15%
Wealth Tax	1% on Net Wealth exceeding Rs. 3mn	0.25% on Net Wealth exceeding Rs. 500mn	1% on Net Wealth exceeding Rs. 10mn

The government has marginally lowered the tax burden for individuals and has effectively left corporates with largely similar tax rates as before, hoping that these changes will make the new code revenue positive. Though the exact impact is not yet known, finance ministry officials have said that the new code will help shore up the tax-GDP ratio significantly from around the current 11 percent level.

On the face of it, the corporate tax rate has been reduced from a little over 33% to 30%. But tax experts say whether a company pays more tax or less will also depend on a key provision called the **Minimum Alternate Tax (MAT).** MAT is applicable to those companies who do not show book profits liable to tax, as they claim a plethora of exemptions on account of being in capital intensive industries. With a view to increase the tax base, the MAT liability has been transitioned from 'book profit based taxation' to 'gross assets based taxation'. The earlier rate of 19.93% on book profits has been changed to 2% on the value of gross assets, with no credit for MAT in subsequent years. Instead of book profits, Minimum Alternate Tax ("MAT") is proposed to be computed on gross value of book assets at the rate of 0.25% on banking companies and 2% on other companies. The change would mean that virtually all companies would now be liable to pay MAT on the basis of assets. This is going to have far reaching implications on capital intensive industries as MAT would now be payable even in the start-up years, despite book losses. This shift in MAT from book profits to gross assets is aimed at encouraging optimal utilization and increased efficiency of assets. But, we feel that this proposal seems to run counter to the objective of encouraging of capital investments for productive growth and changes in MAT rule will cause hardship to loss making companies as they will have to pay tax on assets.

Foreign corporates under Income tax Act,1961 today pay a higher rate of tax. However, the new rate of taxation for foreign corporates under DTC has been decided at 30%. Branches of foreign companies are subject to additional branch profits tax of 15% on total income reduced by the tax paid / payable under the code. Domestic companies will continue to pay dividend distribution tax on dividends distributed at 15% as under the current provisions of the Act. Additionally, under the Code, dividend distribution tax would also be payable on certain loans given by closely held companies.

Partnership firms, association of persons and body of individuals are to be taxed separately as an "unincorporated body" at a maximum marginal rate of 30% without any threshold exemption limit. Wealth tax on company form of organisation is scrapped. Royalty and fees for technical services of non-residents is proposed to be taxed at the rate of 20%.Capital gains are to be taxed at the rate of 30%.

RESIDENTIAL STATUS

• All Companies incorporated in India to be treated as resident in India for the purposes of taxation. Foreign companies would be treated as resident in India if the place of control and management is partly or wholly situated in India at any part of the financial year

• Concept of "Resident but not ordinarily resident of India" proposes to be done away with

• Residents are proposed to be taxed only on India sourced income for initial two years, if they qualify as a non resident in the preceding nine financial years.

ROYALTY / FEES FOR TECHNICAL SERVICES / INDIRECT TRANSFER OF CAPITAL ASSET

• Definition of Royalty and Fees for technical services changed to include:

* *Royalty*: use or right to use of transmission by satellite, cable, optic fiber or similar Technology.

* *Fees for technical services*: development and transfer of design, drawing, plan and software or similar services.

• Royalty, fees for technical services or interest income would be deemed to accrue or arise in India regardless of the payment being made out-side India, or the services being rendered outside India or income has otherwise not accrued in India.

• Income accrued from direct or indirect transfer of capital asset would also be construed as transfer of income deemed to accrue or arise in India.

INCOME FROM EMPLOYMENT

The new DTC also seeks to take the bold step of moving from EEE (Exempt-Exempt-Exempt) to EET (Exempt-Exempt-Taxed) system of taxation for various investment avenues which means any accretion to income till withdrawal is exempt, but withdrawal under any circumstances is taxable. It is proposed to provide the EEE (exempt-exempt-exempt) method of taxation for government provident fund, public provident fund and recognized provident funds. The EET (exempt-exempt-tax) regime should be restricted to new savings instruments after DTC comes into effect, and the same should not apply to existing saving instruments.

Each exemption and deduction has its objective. In order to give greater push, the EEE model followed so far was three-split *viz.,* (*a*) to provide tax incentive in the year of investment, (*b*) not to levy tax on the income accruing on such investment, and (*c*) not to charge any tax when the investment matures in future. Thus, from the perspective of taxability, the entire process remains tax-free, *i.e.,* Exempt, Exempt and Exempt (EEE).

The existing structure of EEE, *i.e.,* exempts, exempt and exempt, was devised in early fifties and sixties wherein the country was in need of savings badly. In order to attract resources for development work, the Government provided substantial tax incentives under the Direct Tax.

However, the scenario has changed since then and Indian citizens have moved far ahead of the period of 50s and 60s. Nature and number of challenges have changed and, hence, the need for appropriate response. Meanwhile, at global level, various countries which have experimented with this model, *i.e.,* EEE, also found it costly and moved to other models. The most common model which has appeared, and is prevalent today, is EET, *i.e.,* Exempt, Exempt and Tax.

JUSTIFICATION FOR EET

EET is a system under which (*a*) deduction is permitted from gross taxable income while computing tax liability, *i.e.,* first limb 'E', (*b*) tax is not levied on income accruing on such investment, *i.e.,* second limb 'E' and lastly (*c*) tax is levied on the amount withdrawn, *i.e.,* 'T'.

Having enjoyed the benefits under EEE, 'T' of EET is bound to create lots of heart-burn amongst the taxpayers, it will be difficult to reconcile to it. Most of citizens in India may not be aware about the amount of debt the Central and State Governments have created since independence. The most important aspect which has not been visible to all of us is pension liability of the retired employees which has not been provided for/funded so far. Apart from that the State has failed to make sufficient provision for the citizens who are not part of the organized sector. Secondly, looking to the size and population of the country, rate of growth has not been sufficient enough. There is shortage of resources.

Experience in the European countries has shown that EET is the best solution to tackle these issues. Data reveals that the countries having EET system have shown considerable progress in pooling the resources, rapid growth in industrial development making it possible to provide steady income during the retirement age. There is hardly any country following the EEE model. All these factors must have weighed with the policy-makers to opt for EET. One may not like EET, but will have to learn to live under it.

Moreover, in India, savings of household sector forms more than 20 per cent to 25 per cent of the current earnings. Since it forms such a major part, taxation thereof also assumes importance. If an individual has to part with substantial portion of the savings so made for taxes, there is no point in foregoing the present consumption. Therefore, the knowledge of the taxation structure and corresponding system of investment, affecting hard-earned savings, assumes substantial importance. If EET is going to come and citizens have to live under it, there is no alternative except learning to live with it.

Deductions granted under the first limb are considered as incentives. Tax incentives are of two types, *viz.,* exemptions and deductions. But, these incentives are treated as inefficient, distorting, iniquitous, imposing greater compliance burden on the taxpayer and on the administration front, resulting in loss of revenue, creating special interest groups, adding to the complexity of the tax laws, and encouraging tax avoidance and rent seeking behaviour. In order to encourage net savings, it is proposed to rationalise tax incentives. For the said purpose, the DTC proposes EET method of taxation.

METHODOLOGY OF INITIATING EET

In this section, we will examine each limb of EET under the proposed scheme of taxation:

(*a*) THE FIRST LIMB - 'E' - DEDUCTION AT THE TIME OF INVESTMENT - The DTC provides for deduction in respect of contributions (both by the employee and the employer) to any account maintained with any permitted savings intermediary, during the financial year. This account will be required to be maintained with any permitted savings intermediary in accordance with the scheme framed and prescribed by the Central Government in this behalf. The permitted savings intermediaries will be approved provident funds, approved superannuation funds, life insurer and New Pension System Trust. The accretions to the deposits will remain untaxed till such time as they are allowed to accumulate in the account.

(*b*) THE SECOND LIMB - 'E' - EXEMPTING INCOME ACCRUING ON INVESTMENT - Under the proposed scheme, the taxpayer will be having the option of making investment wherein income will be accruing periodically and appreciating in value as well. A question may arise about taxability of the income which has accrued and the right to receive has been crystallized in favour of the taxpayer. Under section 3(1)(*a*) such income becomes taxable as and when it accrues. However, one does not find any specific clause under Schedule VI exempting such income. As a concept, EET means not levying tax on the income accrued till it is withdrawn for consumption. DP refers to this principle and says that there will not be any tax on the income accruing till it is withdrawn. However, a specific clause in this respect is missing in Schedule VI.

(*c*) THE THIRD LIMB - 'T' - TAXING THE WITHDRAWALS - As per the scheme laid down under DTC, any withdrawal made, or amount received, under whatever circumstances, from these accounts will be included in the income of the assessee under the head 'Income from residuary sources', in the year in which the withdrawal is made or the amount is received. Accordingly, it will be subject to tax at the appropriate personal marginal rate.

Generalized impact of EET:

Tax impact, in the first stage, will be beneficial as, subject to the limits laid down, tax can be saved to the extent of investment made.

Tax impact, in the second stage, will also be beneficial as there will be no tax liability on income accruing to the investment made. A point to be remembered here is that rate of return will have compounding impact, as there will not be any outflow on account of tax. This will help in boosting the growth of the corpus at a faster rate.

Tax impact, in the third stage, will depend upon how the amount is withdrawn from the system. If the assessee opts for monthly withdrawals in the form of annuity, it will be treated as 'Income from residuary sources' and taxed as income for the said year at the applicable rate of tax. Here, there may not be any tax impact if the withdrawals are within the threshold exemption limit.

If the assessee opts for the withdrawal of entire amount of savings made, tax may be payable at a higher rate. Since the assessee will be withdrawing from the funds after reaching the age of retirement, benefit of higher threshold exemption limit will be available.

SPECIFIC IMPACT OF EET ON TAXPAYERS

What will be the impact on the taxpayers of switch-over from EEE to EET? For a taxpayer, the EET scheme *per se* will always be costly. This is for the reason that while comparing the last leg 'E' with the 'T', there is bound to be additional cost. However, therefore, one should not jump to conclude that EEE is better than EET as proposed under the DTC. We should remember that the DTC is proposing EET as a package of increased limit of Rs. 3 lakhs for investment. It means,

(*a*) there will be additional tax saving on additional amount invested of Rs. 2 lakhs. Assuming that the rate of tax, is 30 per cent it will be Rs. 60,000. The taxpayer will have the option of making investment of it, *i.e.,* Rs. 60,000 or consuming it.

(*b*) income accruing on Rs. 2 lakhs will also be tax-free. This will help in faster growth of the corpus.

In view of this, while making comparison one will have to keep these factors in mind.

CHART 1: INCOME TAX EXEMPTIONS WITH EEE (EXEMPT-EXEMPT-EXEMPT)

Total Exempted income = 3 Lakh

A = Total of Rs 1 Lakh

Provident Fund (PPF)
Pure Insurance product
New Pension Scheme (NPS)
Government Provident Fund (GPF),
Recognised Provident Funds (RPF)

B= Total of Rs 50000

Life Insurance premium payment
Health insurance premium payment
Tuition fees

C = Total of Rs 1.5 Lakh

Interest amount of housing loans

In place of the existing Sec 80C, the bill proposes a three-tiered deduction. The first tier is a Rs1 lakh deduction for savings in respect of contributions to the employee provident fund, PPF, pension fund etc. The second tier is a deduction with a ceiling of Rs50,000 reserved for deduction in respect of life insurance and health insurance premium as well as for tuition fees. The third tier is for interest amount of housing loan upto Rs 150000.

More clarity is required in respect of how some of the existing instruments that are eligible for tax deduction like ELSS funds, post office instruments such as NSC and time deposits, senior citizen saving scheme (SCSS) and tax-saving bank deposits would be treated under the new regime. Secondly, one cannot help but feel that Rs50,000 is too little for significant payments like life and health insurance as also tuition fees.In a word, the new tax code proposed exemption of income tax on specified savings up to Rs 3 lakh a year as against the present deduction limit of Rs 1 lakh for all types of savings under 80C of the IT Act. Again this is no final direct tax code for all the future years and the finance ministry will keep review and update as and when it's required.

Therefore, if the Tax Code is generous in giving relief to tax payers, surely it will also make life miserable for those who evade tax through fraudulent means. As the Tax Code prescribes stiff penalties and prosecution for non-compliance with the tax laws, it proposes that every tax offense under the Code will be punishable by both imprisonment and fine.

Apart from defaulters, the Tax Code proposes to punish tax consultants who help in tax evasion. It gives sweeping powers and blanket protection to Income Tax officials for initiating court proceedings on matters relating to tax offences.

Earlier, since all these payments were covered by Section 80C, taxpayers could suit the deductions as per their individual situations.

Those with kids could take the shelter offered by tuition fees; those who were self-employed did not have PF contributions but could if owning a house takes advantage of the principal repayment. Elders could use bank deposits and SCSS and in the absence of social security and government sponsored health support and everyone could pay life and medical insurance premiums and take respective deductions separately. However, under the proposals of the new bill, this freedom is significantly hampered. Moreover, popular exemptions such as house rental allowance, leave travel allowance, leave encashment, tax on non monetary perquisites and medical re-imbursements are proposed to be withdrawn. Employers are responsible to withhold tax on salary income based on the payment or accrual whichever is earlier.

INCOME FROM HOUSE PROPERTY

• In case of let out house properties, the gross rent is proposed to be calculated as higher of contractual rent or a presumptive income of 6% of rateable value / cost of construction / cost of acquisition whichever is higher.
• Deduction in respect of the interest on borrowed capital is proposed to be claimable only in the case where the house properties are let out.
• Deduction in respect of repairs and maintenance cost stands reduced to 20% of the gross rental value.

INCOME FROM BUSINESS

• Income of separate and distinct business which are not interlinked or interlaced to be computed separately.
• Income from business to be computed in the manner laid down under the Code:

TABLE 3: COMPUTATION OF BUSINESS EARNING

Sl.no.	Particulars	Amount.
1.	Gross earnings	XXX
2.	Less: 1) Operating expenditure 2) Finance charges 3) Capital allowances	XXX
3.	**Income from Business**	**XXX**

• The Code proposes to classify any asset as either a "business asset" or a "investment asset". A business asset is classified further into "business capital asset" and "business trading asset".
• Profits / losses on transfer of investment assets are taxed under the head "Income from capital gains".
• The ambit of business has been widened to include:
* Profit or loss arising in the course of slump sale.
* Sale proceeds received on transfer of self generated assets.
* Any reduction, remission or cessation of liability.
* Profits on transfer of business capital asset.
* Amount accrued or received either as advance or deposit from lease of assets for not less than 12 years.
•Many new Block of Assets / categories introduced such as:
* Scientific Research Assets.
* Assets promoting Family Planning.
* Deferred Revenue Expenditure.
* Non compete fee.
* Voluntary Retirement Scheme.
• The Code does not provide for carry forward of taxes paid under MAT for set off against future tax liabilities.
• Concept of unabsorbed depreciation proposed to be done away with. Both business loss and loss under the head capital gains to be allowed to be carried forward for indefinite period. However, the loss under the head capital gains can be still set-off only against the income under the head 'capital gains'.
• Specific provisions continue for change in shareholding of unlisted public companies / private companies impacting carry forward and set-off of losses.
• 100% deduction on revenue / capital expenditure incurred on scientific research and development (other than land).
• 150% deduction on revenue and capital expenditure incurred on in-house scientific research and development by a company, excluding expenditure on land.
* The benefit has been extended to all industries.
* Government Approval is a pre-requisite for claiming the weighted deduction.
• The Code proposes to shift from profit linked / Area based incentive schemes to investment based incentive schemes. Accordingly, exemptions available under section 10A, 10AA and 10B are proposed to be withdrawn. Discussion paper mentions about grandfathering the benefits, however the code does not contain enabling provisions for such grandfathering.

CAPITAL GAINS

• Concept of "Long term capital asset" and "short term capital asset" is proposed to be withdrawn. All the capital gains are taxable at a flat rate of 30%.
• The indexation benefit can be claimed in respect of those assets that are held by the assessee for more than 1 year.
• The base year of indexation to be changed from April 1, 1981 to April 1, 2000.
• Capital gains and losses to be included in the total income of the financial year in which the investment asset is transferred irrespective of the year of receipt of consideration, except in the case of compulsory acquisition of an asset.
• Under the Code, Securities Transaction Tax is proposed to be abolished.
• Exemption under section 10(38), exempting the sale proceeds received on sale of listed securities which suffered securities transaction tax, stands unaddressed.

Therefore, the Code proposes removal of distinction between long term and short term capital gains; all capital gains would now be taxable at normal rates. The removal of lower tax rate benefit for long term capital gains, coupled with removal of Security Transaction Tax, should increase trading activity in stock-markets.

INTERNATIONAL TAXATION AND TRANSFER PRICING

• The code specifies that there would not be any preferential treatment given to the treaty laws or the Code.
• The code stipulates that the person claiming relief under the treaty would have to get tax residency certificate.
• Discussion paper mentions that when there is a conflict between the provisions of a tax treaty and the provisions of the Code, the one that is later in point of time would prevail.
• General Anti-Avoidance Rule ("GAAR") introduced to curtail tax avoidance and to be invoked on satisfaction of prescribed conditions.
• Commissioner of Income-tax (CIT) empowered to declare any transaction as impermissible if the same has been entered into:
* *with the objective of obtaining tax benefit; or*
* *without any commercial substance; or*
* *creates any rights or obligations not normally created in the arm's length transactions; or*
* *results into direct or indirect misuse of the provisions of the Code*
• Advance Pricing Agreement (APA) mechanism has been introduced which has brought in certainty to the international transactions. Central Board of Direct Taxes granted authority for entering agreement in respect of the arm's Length price with the any tax payer for international transactions. Agreement is valid for period up to 5 financial years unless there is a change in law or facts.
• Determination of arm's length price will be subject to safe harbour rules as may be framed by the Board. Safe harbour rules may not be applicable across all industries/transaction types.

WEALTH TAX BENEFITS

The proposed Tax Code has sought to make major changes in wealth tax calculations and rates. The threshold limit for wealth tax will be raised to Rs 50 crore from the present Rs 30 lakh and the tax rate was reduced from 1 per cent to 0.25 per cent. But, in a smart move, to expand the scope of taxation the Tax Code included financial assets like shares, corporate bonds, fixed deposits, etc in wealth tax. The valuation of these assets will be done at cost or at market price, whichever is lower. In case of capital gains tax too, the Tax Code proposed some sweeping changes. It has done away with the present system of short-term and long-term capital gain tax, and replaced it with a uniform structure and gains will be taxed at the marginal tax rate as applicable to the tax payer. The implications of these changes are clear: The period of holding has no bearing on the tax payable and bigger investors will be taxed at higher rates than the smaller ones.

CONCLUSION

The Code shall replace the five-decade old Income-tax Act ('the Act') from FY 2012 onwards, and true to its promise, proposes to make sweeping and radical changes to the taxation framework in India. There are many features of the Code such as rationalization/reduction of tax rates, removal of profit based exemptions to introduce investment based exemptions, EET scheme of taxation for savings instruments, introduction of general anti-avoidance measures, so on and so forth. The new code is expected to streamline tax rates and administration for foreign institutional investors, for whom India is a top destination. The code aims to provide greater tax clarity and stability to investors who want to invest in Indian projects and companies.

But, there are always two sides of any coin. The Direct Tax code in India is very much discussed and criticized now a day. Even though, the basic aim behind DTC is simple and helpful to the people, it is very much criticized because many provisions under this proposal may harm the investors and FIIs. The flip side here is the loss of revenue to the government due to the concessions being provided and what the finance minister may do to counter that. It is possible that the proposed tax slabs and the tax rates may be standardized to ensure that the loss of revenue to the exchequer is minimized.

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