Direct Taxes Code Bill and Present Direct Taxes Law in India: A Comparative Analysis

PREM SINGH
Assistant Professor,
Sri Aurobindo College (Day), University of Delhi.
Delhi (India)

Abstract:
The Government introduced the Direct Taxes Code Bill in the Parliament for the first time in 2009. The DTC is proposed to be made effective very soon. While some difficult provisions from the first draft of the DTC have been rightly slumped after representations, a number of proposals in the DTC are still likely to require the Corporate to rethink their existing structures and mode of conducting business. The Bill has incorporated convinced amendments taking cognizance of the Parliamentary Standing Committee's suggestions. Moreover, some of the recommendations of the Government-formed expert committee on GAAR are also expected to replicate in the amended version of the Bill that attempts to re-define principles of taxation since introduction of the Income-tax Act, 1961. The Finance Ministry is currently working on the official amendments to the DTC Bill which was tabled in Parliament earlier.

Keywords: *Direct Taxes Code (DTC), Income- tax, Present Direct Taxes (PDT), Law*

---

1. Introduction

Taxes are the main source of revenue for the Government to finance its welfare and development activities. In India, Income Tax Act' 1961 comprises following;

- Income Tax Act - The levy of income tax in India is governed by the Income Tax Act'1961. This act comes into force on 1st April'1962. The Act contains 298 sections and XIV schedules. These undergo change every year with addition and deletions brought by the Finance Act passed by parliament.
- The Finance Act - Every year the Finance Minister of Government of India presents the Budget to the parliament.
  - Part A of the budget speech contains the proposed policies of the Government in fiscal areas.
  - Part B of the budget speech contains the detailed tax proposals.
- Income Tax Rules - The administration of direct taxes is looked after by the Central Board of Direct Taxes (CBDT). The CBDT is empowered to make rules for carrying out the purposes of the Act. For the proper administration of the Income Tax Act, the CBDT frames rules from time to time. These rules are collectively called Income Tax Rules, 1962.
- Circulars/Notifications - Circulars are issued by the CBDT from time to time to deal with certain specific problems and to clarify doubts regarding the scope and meaning of the provisions. The department is bound by the circulars while such circulars are not binding the assesses, they can take advantage of beneficial circulars.
- Case Laws - This is an unavoidable part of income tax law. It is not possible for Parliament to visualize and provide for all possible issues that may arise in the implementation of the Act. Hence the judiciary will hear the disputes between the assesses and department and give decisions on various issues. Supreme Court decisions become the law of the land and decisions by various high courts will apply in the respective states.

India has a tax structure, which suffers from serious short comings, such as;

1. It is very complex.
2. It is a highly complex domestic trade rate structure with multiplicity.
3. Cascading of taxes.
4. Wide spread exemptions and concessions to various items as well as specific or group of producers.
5. Very extensive Income Tax concessions are granted with respect to returns from certain type of activities.
6. Complex language of its sections and provisions because of that interpretation and understanding the Income Tax Act, 1961 become difficult and this become an excuse for non compliance under law.
7. It is neither cost effective nor is able to encourage voluntary compliance.

2. The Direct Taxes Code Bill

- The Ministry of Finance released the Direct Taxes Code (DTC) Bill, 2009 on 12th August'2009. The code has been drafted in a transparent, logical and simplified manner and is ease for an ordinary man to comprehend.
- A Revised Discussion Paper on DTC has been brought on 15th June'2010 in response to the suggestions received from different quarters, various classes of assessees, Chamber of Commerce and public at large and the Ministry issued a new revised Direct Taxes Code Bill.
- Some of the significant changes proposed in the DTC have been reversed.
- The main purpose of replacing the Income Tax Act'1961 with this new Direct Taxes Code is to improve the efficiency and equity of the tax system by eliminating distortions in the tax structure, improving new level of taxation and expanding the tax base.
- As per the discussion paper issued by the Ministry of Finance in the context of DTC, the plan for broadening the tax base essentially comprises of three elements;
  - Minimization of Exemptions, which would result in higher TAX-GDP ratio, improves equity; reduce compliance cost, lower administrative burdens.
  - Removal of ambiguity in law which facilitates tax avoidance.
  - Checking of erosion of tax base through tax evasion.

3. Salient Features of the DTC

1. The code is a move towards the rationalization of tax rate structure.
2. The tax base has been broadened and more number of assessees would be brought under the tax net.
3. This code is a single code for all direct taxes including wealth tax.
4. As the code is drafted in a simple and a lucid manner, it is expected to decrease the scope for lawsuit.
5. Tax would levy on the basis of the ability of the person to pay which depends on his income and consumption.
6. For the purpose of better understanding and to reduce complexity, related sections have been grouped under the respective chapters. E.g. Exemptions related to salary would now fall under the head "Income from Employment".

4. Direct Taxes Code (DTC) and Income Tax Act'1961 (ITA) - A Comparison

1. Earlier Income Tax Act and Wealth Tax Act are abolished and single code of tax, DTC in place.
2. Concept of Assessment Year and Previous Year is abolished. Only the "Financial Year" terminology exists in DTC which means a period of 12 months beginning from the 1st day of April.

3. Under ITA residential status are “Non Resident”, “Resident of India”, and “Resident but not ordinary” are exits under DTC only status of “Non-Resident” and “Resident of India” exits.
4. Under ITA the terminology of assessee means the person, who is paying tax or/and who is liable for proceeding under the Act. Under DTC it has been added with two more definitions namely a person whom the amount is refundable and/or who voluntarily files tax return irrespective of tax liability.
5. Government assessees are covered in DTC even though they are not liable for Income Tax/Wealth Tax. Government assessees are required to comply with provisions of TDS/TCS and ITA is not covered with Government assessees.
6. Best judgment assessment under section 144 of ITA, a best judgment assessment is allowed in cases where there is a failure to file a return or failure to comply with the terms of certain notices etc. Under the DTC, in addition to the existing requirements, a best judgment assessment can also be made if the assessee fails to follow regularly the prescribed method of accounting or if the Assessing Officer is not satisfied with the correctness or completeness of the accounts of the assessee.
7. Under DTC income has been proposed to be classified into two broad groups: Income from Ordinary Sources and Income from Special Sources
   i) Income from Ordinary Sources refers to:
      - Income from Employment
      - Income from House Property
      - Income from Business
      - Capital Gains
      - Income from residuary sources (similar to other sources).

   ii) Income from Special Sources to include specified income of non-residents, winning from lotteries, horse races, gambling, betting, crossword puzzle, etc. Accordingly, such income would be liable to tax on net income basis.
8. Losses arising from Ordinary Sources to be eligible for set off or carry forward and set-off against income only from ordinary sources without any time limit. Similar treatment would apply for set off and carry forward of losses from Special Sources. Loss arising from speculative business, losses under the head capital gains, and losses from the activity of owning and maintaining horse race to be set off only against such income in the same or succeeding financial years. Under ITA losses can be set-off and carry forward only for a limited period of time.
9. Basic exemption limit under present Income Tax Act shall be Rs. 200,000 and proposed DTC it shall be Rs. 300,000.
10. Indirect Transfer - Under ITA, when there is a transfer of a share/interest outside India, there is no transfer of a capital asset in India and no part of the consideration whatsoever is chargeable in India.

Under DTC, where the income of a non-resident in respect of transfer, outside India of any share or interest in a foreign company is deemed to accrue in India under the “transfer of a capital assets situate in India” provision, the income shall be calculated as follow,

5. Taxable Income = (A*B)/C

A - Income from the transfer computed in accordance with provisions of DTC if the transfer was effective in India.

B - Fair market value of the assets in India, owned directly or indirectly by the company (must be represent at least 50% of the fair market value of all assets owned by the company in order for the same to be taxable in India).

C - Fair market value of all assets owned by the company.

11. Under ITA in case of delayed filing of return of income for any particular year, set off and carry forward of losses shall not be allowed.

Under DTC in case of delayed filing of return of income for any particular year, only losses pertaining to that year would not be allowed to be carried forward for set off in future years.

12. Under ITA saving limit allowed for deduction from taxable income shall be Rs.100,000 (80C + 80CCC + 80CCD) (including Rs.20,000 for investment in infrastructure bonds) as per EEE method.

Under DTC saving limit allowed for deduction from taxable income shall be Rs.150,000 which is decomposed as Rs.100,000 for investment in provident fund, pension fund, and other approved securities and Rs.50,000 for child's tuition fees, life insurance and health insurance premiums.

13. Under ITA short term capital gain shall be taxable @15%. Under DTC the effective rate of tax for short term capital gain will be 5%, 10%, and 15% according to income slab in which an individual investor will fall.
14. Corporate tax (as per Financial Year 2012 - 13)

Category	As Per ITA	As Per DTC
Indian Company (IC)	30%	30%
Foreign Company (FC)	40%	30%
Surcharge	(5% and 2%)*	No
Education Cess (+SHEC)	03%	No

*Surcharge is chargeable only if total income is exceeded from Rs. One Crore.

However, profits of Indian branches of foreign companies will be subject to additional 'Branch Profits Tax' leviable @15% under proposed DTC.

15. Minimum Alternative Tax-MAT (as per Financial Year 2012-13)

Category	As Per ITA	As Per DTC
Indian Company (IC)	18.5%	20%
Foreign Company (FC)	18.5%	20%
Surcharge	(5% and 2%)*	No
Education Cess (+SHEC)	03%	No
MAT Credit	10 Years	15 Years

*When book profits exceeds from Rs. 1 Crore.

16. MAT now applicable to SEZ developers and SEZ units and SEZ developers now subject to Dividend Distribution Tax (DDT) similar to SEZ units. DTC also allow a 100% tax exemption to SEZ units on the profits for 2 years further after it will come into force.
17. Wealth Tax - Under Wealth Tax Act 1957, no wealth tax on companies. Under DTC wealth tax is proposed on companies on wealth exceeding One Crore, tax generally on non productive assets. However value of equity in preference shares held by a resident in controlled foreign company will be liable to tax (favorable aspect is that limit of 30 lakh gets extended to 100 lakh).

Income distributed by mutual fund to its unit's holders of equity oriented fund- Under ITA No tax on income distributed but under DTC 5% tax on income distributed.

18. Income distributed by life insurance companies to policy holders of equity oriented life insurance schemes - Under ITA No tax on income distributed but under DTC 5% tax on income distributed.
19. General Anti Avoidance Rules (GAAR) - No such provisions under ITA but under DTC, it empowers tax authorities to declare an arrangement impermissible under certain condition (these can lead to harassment and hardship for taxpayers).

20. Treaty Override Proposal - Under ITA Treaty or the ACT whichever is more beneficial, to prevail but under DTC Treaty or the ACT whichever is more beneficial, is to prevail subject to some specific limitation (it can impact foreign business dealing adversely).
21. Residential Status of Foreign Companies - Under ITA a foreign company Resident in India only if controlled and managed wholly in India. Under DTC the focus will be shifted to place of effective management. (this may create difficulties in implementation as there could be difference of opinion in regard to where is placed effective management)
22. Royalties and Fees for Technical Services (FTS) - Under ITA royalty and FTS are taxable @10% on gross income for foreign companies. Under DTC royalty and FTS proposed to be taxable @20% on gross income for foreign companies.(it can adversely affect import of technology in the country).
23. Controlled Foreign Companies (CFC) - Under ITA there are no rules concerning CFC. Under DTC CFC provisions have been introduced to tax passive income earned by a foreign company (controlled directly or indirectly by a resident in India).

Under proposed CFC rules, even income of such foreign companies not distributed to shareholders would be deemed to be distributed and consequently taxable in India in the hands of resident shareholders as dividend received from foreign company.(the proposal can affect outbound investments and there is no provision for taxes paid abroad and this can result in double taxation)

24. The Direct Taxes Code may seem to be as bulky as the Income Tax Act 1961 but the language used is so simple and easy to understand that a common man can now interpret it very easily.

References

1. http://articles.economictimes.indiatimes.com/2012-02-24/news/31095411_1_tax-avoidance-tax-laws-chinese-tax
2. http://chartered-aaccountant-finance.blogspot.com/2013/09/aaykarbhavan-ao-cant-use-mathematical.html
3. http://companysecreatry.blogspot.com/2013/01/basic-knowledge-of-income-tax-law.html
4. http://csgautam.org/2012/01/08/set-off-and-carry-forward-of-losses/
5. http://economictimes.indiatimes.com/opinion/supreme-court-ruling-on-vodafone-case/articleshow/11645416.cms
6. http://emanohar.com/Income-Tax.html
7. http://epaper.timesofindia.com/Repository/ml.asp?Ref=RVRNLzIwMTIvMDIvMjQjQXIwMTQwMg==
8. http://indiacorplaw.blogspot.com/2010/09/direct-taxes-code-bill-2010-versus.html
9. http://taxguru.in/chartered-accountant/icai-presidents-message-to-ca-community-on-the-xbrl-ifrs-direct-tax-code-satyam-companies-bill-2009-etc.html
10. http://taxguru.in/income-tax/basic-taxes-macro-overview-income-tax.html
11. http://taxguru.in/income-tax/suggestions-of-the-icai-on-the-revised-discussion-paper-on-the-direct-taxes-code.html
12. http://taxguru.in/income-tax/summary-of-key-proposals-of-the-direct-taxes-code-dtc-2010-at-one-place.html
13. http://www.antiessays.com/free-essays/328452.html
14. http://www.business-standard.com/article/economy-policy/foreign-arms-of-indian-firms-may-come-under-tax-net-110061600096_1.html
15. http://www.business-standard.com/article/economy-policy/regulations-on-controlled-foreign-corporations-are-we-ready-110062100065_1.html
16. http://www.caclubindia.com/articles/details.asp?mod_id=7706
17. http://www.caclubindia.com/articles/dtc-bill-2010-decoded-7706.asp
18. http://www.caclubindia.com/forum/comparison-between-present-i-t-act-1961-proposed-d-t-c-130087.asp

19. http://www.caclubindia.com/forum/comparison-income-tax-act-1961-and-dtc--129957.asp
20. http://www.dnaindia.com/money/report-foreign-income-of-companies-may-not-be-taxed-1429239
21. http://www.icai.org/new_post.html?post_id=4916
22. http://www.jeywin.com/wp-content/uploads/2009/12/DIRECT-TAX-CODE-2010.doc
23. http://www.legalindia.in/direct-tax-code
24. http://www.onlinesbs.in/2012/01/everything-you-wanted-to-know-about-direct-tax-code.html
25. http://www.saraltaxoffice.com/articles/direct-tax-code-highlights.php;
26. http://www.scribd.com/doc/18493027/Direct-Taxes-Code-Bill-2009
27. http://www.scribd.com/doc/196582259/30357-Dtc-19988
28. http://www.scribd.com/doc/44480744/Direct-Tax-Laws-Vol-1
29. http://www.scribd.com/doc/50984795/Direct-Tax-Laws-Vol-i
30. http://www.scribd.com/doc/59853530/Taxation-Book
31. http://www.scribd.com/doc/84786422/DIRECT-TAXES-CODE-BILL-2010-49TH-REPORT-of-Parliamentary-Standing-Committee-on-Finance-March-9-2012
32. http://www.simpletaxindia.net/2011/02/direct-tax-code-and-income-tax-act-1961.html
33. http://www.slideshare.net/anshulrab/direct-tax-code-dtc-6659255
34. http://www.taxindiainternational.com/columnDesc.php?qwer43fcxzt=MTk=
35. http://www.thehindubusinessline.in/2011/01/29/stories/2011012950321100.htm