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EMERGING TRENDS IN INTERNATIONAL BUSINESS AND COMMERCE

Edited by
Sanjay R. Ajmeri and Samir M. Vohra

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The Future of the Income Tax Act 1961, i.e., Direct Tax Code

Sanjay K. Radadiya[1]

1. INTRODUCTION

The Income-tax Act was passed in 1961 and applicable in India from 1st April 1962, and has been amended every year through the Finance Act. The Wealth-tax Act was passed in 1957 and has also been amended many times and is now abolished w.e.f. 1-4-2016. The Gift Tax Act also was introduced in 1958 and continues for more than 40 years. The Gift Tax Act 1958 was abolished and again re-introduced in 2004 and has also been amended many times through the Finance Act. Numerous amendments have rendered the three Acts extremely difficult, to understand to the average taxpayers.

Besides, there have been several policy changes due to change in economic environment, complexity in the market, increasing sophistication of commerce, and development of information technology. Accordingly, a draft Code along with a concept paper was released on 12th August, 2009 inviting suggestions from the public. The Code sought to consolidate and amend the law relating to all direct taxes so as to establish an economically efficient, effective and equitable direct tax system which would facilitate voluntary compliance and also reduce the scope for disputes and minimize litigation.

2. WHAT IS THE NEW DIRECT TAX CODE (DTC)

The government is preparing a new direct tax code that will replace the Income Tax Act of 1961. The existing direct tax law, which deals with personal income tax, corporate tax and other levies such as the capital gains tax, has undergone numerous changes over the years.

DTC will aim to revise and simplify the structure of direct tax laws in India into a single legislation. The DTC, when implemented will replace the Income-tax Act, 1961 (ITA), and other direct tax legislations like the Wealth Tax Act, 1957, Dividend Distribution Tax, Corporate Tax, and Fringe Benefit Tax etc.

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3. EVALUATION AND OBJECTIVES OF NEW DIRECT TAX CODE

Evaluation of Direct Tax code (DTC) in India is an attempt by the Government of India to simplify the direct tax laws in India. DTC will revise, consolidate and simplify the structure of direct tax laws in India into a single legislation. The DTC, when implemented will replace the Income-tax Act, 1961 and other direct tax legislations.

Simplify the Present Direct Tax Law

The main objective of proposed DTC is to simplify the present Income Tax Act 1961. Existing Income Tax has thousands of amendments, numerous case laws, writ petitions etc. over the years from the date of implementation 1961. Given this, it is proposed to develop new DTC keeping in mind legal background of Income Tax Act, International best practices, the economic needs of our country and the taxation systems prevalent in various countries.

Transparency

Like Goods and Services Tax (GST), another key objective of DTC will be to bring transparency in the system and law. Further, Prime Minister of India had stated in September 2017 that, 'our 50-year-old income tax law needs to be re-drafted and a new Direct Tax Code (DTC) needs to be introduced in 'consonance with economic needs of the country'. As the government has overhauled the existing indirect tax system last year by implementing Goods and Services Tax (GST), tax reforms would remain incomplete without revamping country's direct tax system.

Hence, New Direct Tax Code (DTC) could lead to bring more tax payers in to the tax net to make system more transparent.

To Boost the Competitiveness in the Global Market

Direct Tax Code (DTC) aims to reduce tax rates for corporate and introduces newer tax concepts in international transactions, changes the basis of computing the taxability of business income, provides expenditure-based incentives and discontinues profit-based incentives. Hence new DTC aims to make businesses more competitive by lowering the corporate tax rate.

Additionally, the new DTC will seek to give further relief to personal income tax payers in lower slabs. DTC will try to make personal income tax rates more 'progressive' by giving relief to people in the 5% and 20% slabs.

The best example is of USA. Due to change in new tax code by USA Government Apple announces plans to repatriate billions in overseas cash, says it will contribute $350 billion to the US economy over the next 5 years, it will create 20,000 new jobs and a new campus. Apple expects to pay about $38 billion in taxes for the horde of cash it plans to bring back to the United States.

Minimise Litigation

Direct tax code also proposed to phase out the remaining tax exemptions that lead to litigation. It will also redefine key concepts such as income and scope of taxation in such way to reduce litigation. Interestingly under DTC, income from all sources, including capital gains from stocks, maturity proceeds of insurance policies and even the PPF, was proposed to be taxed.

There was also no distinction between short-term and long-term capital gains. Hence by minimising the exemption and reducing the tax it is proposed to reduce litigation. Due to the aforesaid key aspect of proposed DTC, industry is eager to welcome another revamp in Tax.

Genesis of Direct Tax Code in India

- On 12th August 2009, for Draft Direct Tax Code inviting suggestions from the public.
- On 15th June, 2010, having considered the suggestions received from various stake holders a revised discussion paper was released.
- On 30th August, 2010, taking into account the suggestions which were accepted by the Government, the Direct Taxes Code Bill, 2010 was introduced in the Lok Sabha.
- On 9th September, 2010 the Bill was referred to the Standing Committee on Finance (SCF) for examination and report thereon.
- In March, 2012 the SCF presented its report to the Speaker, in Lok Sabha.
- On September, 2012 further, the Kelkar in Committee submitted its report on 'Road Map for fiscal consolidation' to the Government.
- On 31st March 2014 Direct Tax Code 2013 revised versions released. The bill included the suggestions of Standing Committee on Finance (SCF) for public comments.

- On 22nd November 2017 Constitution of Task Force for drafting a New Direct Tax Legislation by Ministry of Finance.

4. SOME SALIENT FEATURES OF THE DIRECT TAX CODE

The new code will completely modernize and simplify the existing tax proposals for not only individual tax payers, but also corporate houses and foreign residents. The idea is to keep the provisions simple so that even an average taxpayer can understand the language, rather than having to go to chartered accountants and income tax practitioners. It will also introduce the concept of tax calculators. The language is very simple. By putting simple language and simple forms, it is meant to eliminate litigations as far as possible.

It proposes to make it possible for most taxpayers to file their returns easily with new features like several easy to comprehend illustrations to guide them through the entire process, which today is often seen as complex and confusing. For corporates, it reduces tax rates and introduces newer tax concepts in international transactions, changes the basis of computing the taxability of business income, provides expenditure-based incentives and discontinues profit-based incentives.

The new tax code aims for consolidation and amendment in laws relating to all direct taxes (income tax, dividend distribution tax, fringe benefit tax and wealth tax), besides establishing a system that facilitates voluntary compliance in tax payments. Also, when the scope is reduced for disputes and minimization of litigation, the tax system as a whole becomes effective and efficient. In business income, the basis of computation of business income is proposed to be changed from *"business profits approach"* to *"income expense model."* More clarity would be required for computation of gross earnings and deductible expenses.

The tax code aims at widening the base of taxation through discontinuation of incentives, reducing threshold limit for companies under transfer pricing etc. while reducing the taxation rates. In transfer pricing, the law is new for Indians and needs more clarifications. The new code will also recast the powers of the Central Board of Direct Taxes, induce more transparency in decision-making and tune it to tax boards of countries like the US, Canada and Britain.

Comparison between Present Income Tax Act 1961 and Direct Tax Code

Point of Comparison	*Direct Tax Code*	*Income Tax Act 1961*
Residential Status	Only Resident and Non-Resident	Includes Resident, Non Resident. Resident but not ordinary resident
Year	Only Financial Year prevails.	Concept of Previous year and assessment year is used
Income Distributed by LIC companies to the holders having the equity oriented life insurance	Taxable @ 5%	Exempt
Income Distributed by Mutual funds companies to the holders of equity oriented MF's	Taxable @ 5%	Exempt
Long Term Capital Gain on transfer of listed share or units	Will become part of normal income. But indexation benefit will be there. Since there is a proposal to abolish STT so STT will not be required to be paid on trading of listed shares	It is exempt.
Assesse Definition	1. Tax-payer or/and who is liable for proceeding under the Act 2. To whom the amount is refundable 3. Finally someone who voluntarily files tax return irrespective of tax liability	1. Tax-payer or/and who is liable for proceeding under the Act.
Income-Sources	Income are broadly classified into 2 parts 1. Special sources 2. Ordinary sources • Employment income • House property income • Also Income Business • Capital Gains • Income from Residuary Sources	Income in IT Act has only one part. i.e. income from ordinary sources
Tax Rate for ultra-rich (Income of 10 crores or more)	35%	30%+surcharge 15%
Taxation of Dividend	15%	Under the Income-tax Act, the dividend distribution tax is to be levied. And it is at the rate of 15 per cent plus cess as applicable.
Who can conduct Tax Audit?	As per the new DTC. CA's, CS's and even cost accountant can do tax audit	As per IT Act 1961 the tax audit was only done by the CA's

5. 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 2018. The aim of the DTC is to simplify tax legislation in part to attract foreign business and investment.

In December, the US enacted a Tax Cuts and Jobs Act, lowering the country's corporate tax rate from 35% to 21%. A month later, Apple Inc. said it would invest $30 billion to expand US operations. India's new direct tax code will take forward the plan to lower the corporate tax rate from 30% to 25% for all firms gradually, as revenue collection improves. From 2018–19, the 25% tax rate is available to all firms with sales less than ₹ 250 crore.

Looking into the aforesaid key aspect of proposed DTC, industry is eager to welcome another revamp in Taxation. As per the various news reports once the draft direct tax code is submitted by the panel to the government, it will be examined by the Centre's top leadership, and then placed in public domain for feedback. Only after an extensive process of feedback and consultation with stakeholders is undertaken, will the draft law be taken to Parliament for approval. Hence, it unlikely to introduce new DT code before 2019. Income Tax Act 1961 will soon be history. Direct Taxes Code will rule our lives and money now.

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