PROJECT ON

FOR

DEPARTMENT OF COMMERCE

UNIVERSITY OF LUCKNOW

BY

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IN PARTIAL FULFILLMENT OF

Ph D COURSE WORK

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I am extremely grateful and remain indebted to the Department of Commerce, University of Lucknow for giving me the opportunity to carry out this Project Work.

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PREFACE

"Knowledge will forever govern ignorance; and people who mean to be their own governors, must arm themselves with the power which knowledge gives."

– James Madison

It is my pleasure to present the Project of The Direct Tax Code (DTC) – A Comparative Study of the Changes Proposed VIS-À-VIS the Direct Tax Code 2010 (DTC-I)And the Existing Income-Tax Act, 1961 And Wealth Tax Act, 1957. The Departmentally Related Parliamentary Standing Committee on Finance submitted its 15th Report on 'The Direct Taxes Code Bill, 2010 on March 9, 2012. The Bill was introduced in the Lok Sabha on September 9, 2010 to replace the Income Tax Act, 1961 and the Wealth Tax Act, 1957.

This Project is intended to serve a summarized study material to the readers, an essential reading for DTC which contains a summary of Direct Tax Code-2010. The main feature of this Project is its simplicity and When enacted into a law, the Code will replace both the Income-tax Act, 1961 ("the Act") and the Wealth Tax Act, 1957 ("the 1957 Act"). DTC provides "The Twenty-Second" type of schedules and Project included all those in a simple way for extent of the knowledge for readers.

I sincerely express my appreciation and thanks to the Professor Arvind Kumar,

Head of Department, Department of Commerce, University of Lucknow for giving me this Project opportunity.

I hope that this project would be useful for its esteemed readers and it will also useful for them to increase knowledge. At the end of this project, necessary annexure are included for the convenience of the readers.

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I thank everyone who has a helping hand in the lent preparation of this project.

BACKGROUND

- Present income-tax law in India of 1961 which replaced 1922 law.
- Draft Direct Tax Code (DTC) 2009 unveiled in August 2009 for simplification / keeping pace with changing business landscape.
- Indian Government received more than 1,600 representations on DTC 2009.
- Revised Discussion Paper (RDP) released in June 2010 on 11 specific issues.
- DTC 2010 tabled in the Indian Parliament on August 30, 2010.
- After clearance from the Parliamentary Standing Committee, DTC 2010 may be passed in the Winter Session.
- The DTC 2010 proposed for effective from FY commencing April 1, 2012.
- The DTC 2010 to be effective from FY commencing April 1, 2013.

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Foreword

The DTC Bill, 2010 introduced in the Parliament is proposed to be made effective from 1 April 2013. While some onerous provisions from the second draft of the DTC have been rightly dropped after representations, several proposals in the DTC are still likely to compel the corporate to rethink their existing structures and mode of conducting business. For example, the DTC proposes to tax transfer of shares of a foreign company, on the basis that there is a transfer of a capital asset situate in India, if the fair value of the assets situated in India constitute at least 50 percent of the assets directly or indirectly held by the foreign company. Further, an overseas company with a place of effective management in India will now be treated as a tax resident in India and would be consequently liable to tax in India on its global income.

Other provisions of interest to India Inc. relate to APA and the GAAR. The former is a very welcome step and will go a long way in minimizing the transfer pricing disputes. However, the wide-sweep of the GAAR has been retained, despite the many representations made to the government in this regard. One hopes that in practice though, it will be applied judiciously.

Another key provision deals with the continuation of tax holidays to units in SEZs. In a welcome move, much to the delight of India's exporters, the Bill provides that units in SEZs that commence operations on or before 31 March 2014 are to be entitled to a grandfathering of profit-linked tax deductions.

However, units in SEZs will not be exempt from MAT, a move which dampens the attractiveness of SEZs. It's heartening to note that the long term capital gains on sale of listed shares continue to be tax exempt and short term capital gains on the sale of such shares will be taxed at half the applicable rates. Gains on sale of other assets (including unlisted shares) are to be taxed fully, subject to indexation benefits. Overall, the calibration of tax rates, which was hinted at in the revised discussion paper has been carried through with the Corporate tax rate proposed at 30 percent instead of the earlier rate of 25 percent and individual tax slabs being considerably less generous as compared to those which had earlier raised euphoric hopes of low personal taxation in India. India Inc. has long advocated its preference for a modern, stable and simple tax regime. Whether the DTC meets these criteria is something that will be undoubtedly debated as one analyses the fine print. However, it is the tax administration's implementation that will determine the long-term impact of the new tax regime.

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1.0 INTRODUCTION AND OVERVIEW

A consolidated legislation for Direct Taxes in the country, *viz*., the Income-tax Act, 1961 and Wealth-tax Act, 1957, titled 'Direct Taxes Code Bill, 2009 was released by the Honorable Finance Minister of India, Shri Pranab Mukherjee, for public debate on 12th September, 2009. ***Its purpose, according to the Finance Minister is "to improve the efficiency and equity of our tax system by eliminating distortions in the tax structure, introducing moderate level of taxation and expanding the tax base"***. Apparently, the Code is intended to reform the two taxes and enact a unified Code. No express terms of reference were given to the body of few officers working in the Department of Revenue, who were entrusted with the task of visualizing the future tax laws of the country. ***Therefore, what is proposed to discuss here is whether the enactment of the Code would usher in any meaningful reforms of the direct taxes and ensure that the same would play meaningful and positive role in giving a boost to the country's economic development, rapid growth of GDP and GDP tax ratio, accelerate flow of foreign exchange, project India as a strong economy, better taxpayers-tax administration relationship, increase voluntary compliance and tax bases and secure many similar other such objectives***. The first draft of the Direct Taxes Code was released in August, 2009 along with a Discussion Paper for public comments. Thereafter, a Revised Discussion Paper was released in June, 2010. Based on the comments received, a Bill named **"The Direct Taxes Code, 2010"** has been introduced in the Parliament. The usual convention of the word "Bill" being the part of the name of the Bill has been departed from. The proposed name (*i.e.* Short Title) of the law to be enacted is again **"The Direct Taxes Code, 2010"**. Again the word "Act" is not part of the proposed Short Title as is the usual convention in India. When enacted into a law, the Code will replace both the Income-tax Act, 1961 ("the Act") and the Wealth Tax Act, 1957 ("the 1957 Act"). The salient features of the Code *vis-à-vis* the existing provisions of the Act and the 1957 Act are set out in the following paragraphs.

1.1 STRUCTURE OF THE INCOME TAX ACT, 1961, WEALTH TAX ACT, 1957 AND THE PROPOSED DIRECT TAX BILL, 2010

Structure of the existing Income Tax Act, 1961, the Wealth Tax Act, 1957 and the proposed Direct Taxes Code Bill, 2010 is as follows:

A. Income Tax Act, 1961

The Income Tax Act 1961 lays down the frame work or the basis of charge and the computation of total income of a person. It also stipulates the manner in which it is to be brought to tax, defining in detail the exemptions, deductions, rebates and reliefs. The Act

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defines Income Tax Authorities, their jurisdiction and powers. It also lays down the manner of enforcement of the Act by such authorities through an integrated process of assessments, collection and recovery, appeals and revisions, penalties and prosecutions. The Act has been amended annually through the Finance Act. Income Tax Act, 1961 comprises of

(i) 23 Chapters

(ii) 656 Sections

(iii) 14 Schedules

B. Wealth Tax Act, 1957

Wealth tax, in India, is levied under Wealth-tax Act, 1957. Wealth tax is a tax on the benefits derived from property ownership. The tax is to be paid year after year on the same property on its market value, whether or not such property yields any income. Similar to income tax the liability to pay wealth tax also depends upon the residential status of the assessee. The Wealth Tax Act, 1957 comprises of

(i) 8 Chapters

(ii) 47 Sections

C. Proposed Direct Taxes Code Bill, 2010

The Direct Taxes Code Bill, 2010 consolidates and integrates all direct tax laws and replaces both the Income-tax Act, 1961 and the Wealth-tax Act, 1957 by a single legislation. The provisions applicable to a taxpayer are in the main clauses while complex computations and exceptions have been placed in Schedules. The proposed DTC Bill, 2010 comprises of

(i) 22 Chapters

(ii) 319 Clauses

(iii) 22 Schedules

1.2 OBJECTIVES OF THE CODE

The Code seeks to consolidate and amend the law relating to direct taxes, that is, 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 minimize litigation.

1.3 SALIENT FEATURES OF CODE

The following are the salient features of the Code—

- **Single code** for direct taxes;

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- **Use of simple language** - as to convey with clarity the intent, scope and amplitude of the provisions of law;
- **Reducing the scope of litigation** - by avoiding ambiguity in the provisions so that the taxpayer and tax administration are *ad idem* on the provisions and the assessment results in a finality;
- **Flexibility**- by reflecting the general principles in the statute and leaving the matter of details to rules, Schedules so that changes in the structure of growing economy are accommodated without resorting to frequent amendments;
- **Ensuring that the law can be reflected in a Form** - by designing the structure of tax laws so that it is capable of being logically reproduced in a Form;
- **Consolidation of regulatory functions** - provisions relating to definitions, incentives, procedure and rates of taxes have been consolidated for better understanding of the legislation by rearranging various provisions to make them consistent with general scheme of the Act;
- **Elimination of regulatory functions** – by withdrawing the regulatory function of the taxing statute;
- **Providing stability** – by prescribing the rates of taxes in the Schedule of the Code instead of being done annually in the Finance Act.

1.4 BASIS OF CHARGE

(A) In accordance with the provisions of this Code, every person shall be liable to pay income-tax in respect of his total income of the financial year.

(B) Subject to the provisions of this Code, income-tax, including additional income-tax, shall be charged in respect of the total income of a financial year of every person.

(C) Where the income-tax referred to in **sub-section (2)** is to be charged in respect of the income of a period other than the financial year, the income-tax for such period shall be charged accordingly.

(D) The income-tax referred to in **sub-section (2)** shall be charged at the rate specified in the First Schedule in the manner provided therein.

(E) In respect of the income chargeable under **sub-section (2)**, income tax shall be deducted or collected at source or paid in advance, in accordance with the provisions of this Code.

(F) The chargeability of income-tax on the income of a financial year under the foregoing provisions shall be determined in accordance with the provisions of this Code as they stand on the 1st day of April of that financial year.

1.5 RESIDENTIAL STATUS

Under the Act, a resident's world-wide income is taxed. A non-resident is exempt from tax on his foreign sourced income. In case of individuals and HUFs, a third category of residential status "not ordinarily resident" is there in the Act. ***The 'not ordinarily residents' enjoy exemption in respect of foreign-sourced income (except when such income is derived from a***

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business controlled from India or profession set up in India). The Kelkar Committee report recommended. Accordingly, the Task Force recommends that residents but not ordinarily residents must be subjected to tax on their global / world-wide income at par with residents. To do so, this unusual category of resident but not ordinarily resident taxpayers must be deleted.

This will not only enhance the income tax base, but also remove an antiquated anomaly and simplify the law.

The Code proposes to abolish the status of ***"NOT ORDINARILY RESIDENT". HOWEVER,CLAUSE 29 OF THE SIXTH SCHEDULE TO THE CODE EXEMPTS FROM TAX ANY INCOME ACCRUING TO AN INDIVIDUAL OUTSIDE INDIA, IN A FINANCIAL YEAR FROM ASOURCE OTHER THAN A BUSINESS CONTROLLED IN OR A PROFESSION SET UP IN INDIA, IF THE INDIVIDUAL—***

(a) For a period, or periods, amounting in all to one hundred and eighty-two days or more in that year; or

(b) For a period, or periods, amounting in all to—

- Sixty days or more in that year; and
- Three hundred and sixty-five days or more within the four years immediately proceeding that year.

Thus, the present exemption under **section 5(1)** of the Act for individuals who satisfy the criteria in (*a*) or (*b*) above is sought to be continued under the Code. However, the present exemption for not ordinarily resident HUFs is sought to be abolished. ***The Kelkar Committee has recommended abolition of Not Ordinarily Residents status and abolition of exemption to both individuals and HUFs on a non-discriminatory, rational and economic basis. The abolition of exemption to HUFs while continuing the exemption to individuals is not rational, non-discriminatory and economically Sound tax policy. This will unnecessarily provide room for allegations of mischievously and selectively targeting HUFs and a particular religion. The Government should either continue the present exemption in respect of foreign sourced income to both not ordinarily resident individuals and HUFs or abolish the same for both as recommended by Kelkar Committee.***

In the case of a company, it is proposed that the company shall be resident in India if it is an Indian company or if the place of effective management (POEM) is in India. ***POEM has been defined to mean the place where the board of directors or executive directors make their decisions or the place where such executive directors or officers of the company perform their functions and the board of directors routinely approves the commercial and strategic decisions taken by such executive directors or officers***.

In all cases, other than an individual, the persons would be a resident in India, if the place of control and management of the affairs, at any time of the year is situated wholly, or partly, in India.

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1.6 SOURCE RULES

Additional source rules for income arising to a non- resident are proposed to be introduced as income deemed to accrue in India; for e.g. insurance premium including reinsurance covering any risk in India, from the transfer of any share or interest in a foreign company, where the fair market value of the assets in India owned by the company represent at least 50% of the fair market value of all the assets owned by the company etc.

1.7 TAX RATES AND SLABS

According to The DTC, every person, any assesses whose total income exceeds the maximum exemption limit, shall be chargeable to the income tax at the rate or rates prescribed in the Finance Act. The total income of an individual is determined on the basis of his residential status in India. The Bill proposes widening of income tax slabs. ***The Committee recommends further widening of these slabs as it would help minimize compliance and transaction costs. It would also help the Income Tax (IT) Department focus more on the higher income groups and categories which are more prone to evasion and avoidance.***

The table below shows the tax slabs proposed in the Bill and those suggested by the Committee.

Tax Rate	Tax Slabs (in Rs lakh)		
	Current Slab	DTC Bill	Committee Report
Nil	0 – 1.6	0 – 2	0 – 3
10%	1.6 – 5	2 – 5	3 – 10
20%	5 – 8	5 – 10	10 – 20
30%	Beyond 8	Beyond 10	Beyond 20

Table (i)

Revenue projections for the direct tax collection for financial year 2012-13 based on the tax rates proposed in the DTC:

DTC – REVENUE IMPLICATIONS FOR 2012-13

Sl. No.	Exemption Limits, Slabs & Tax rates		
	Income category	Income Tax Act, 1961 for Income earned in FY 2011-12. (In Rs. lakhs)/ percentage (inclusive of surcharge & cess)	Proposed for DTC (2012-13) (In Rs lakhs)
1	PIT exemption limit	1.8	2.0
2	PIT first slab (10%)	1.8 to 5.0	2.0 to 5.0

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3	PIT second slab (20%)	5.0 to 8.0	5.0 to 10.0
4	PIT third slab (30%)	> 8.0	> 10.0
5	Corporate tax (Including sur. & cess)	32.4%	30%
6	MAT rate on profits	20%	20%

Table (ii)

Projections for direct tax collections:

Particulars	2011-12 (Budget Estimates)	Potential collection in 2012-13 at Existing Rates* of 2011-12	Loss due to lower DTC rates	Estimated collection in 2012-13
1	2	3	4	(3-4)
CIT	3,59,990	4,37,603	32,415 **	4,05,188
PIT	1,72,661	2,09,886	7,000***	2,02,886
Total	5,32,651	6,47,489		6,08,074
Growth		**21.56%**		**14.16%**

*Existing GDP growth of 14%, buoyancy 1.54 (Average of last five years excluding 2008-09) = 14 X 1.54=21.56%

**Reduction in collections due to lowering of tax rate from 32.4% to 30%

***Reduction on account of higher exemption limit and broader tax slab

Table (iii)

Details of number of income tax payers in the tax slabs of Rs. 0-5 lakh, Rs. 5-10 lakh, Rs. 10-20 lakh and beyond Rs. 20 lakh

Estimated number of taxpayers (FY 2011-12)		
Slab	**Number (in lakhs)**	**Percentage of taxpayers**
0-5 lakh	288.44	89.0%
5-10 lakh	17.88	5.5%
10-20 lakh	13.78	4.3%
>20 lakh	4.06	1.3%
	324.16	**100%**

Table (iv)

Amount of tax collected under the existing rates and percentage of tax collected in each of the said slabs

Estimation of tax collection in each slab (FY 2011-12)		
Slab	**(Rs. in crores)**	**Percentage of tax collected**
0-5 lakh	15,010	10.1%

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5-10 lakh	21,976	14.8%
10-20 lakh	17,858	12.1%
> 20 lakh	93,229	63.0%
	1,48,073	**100%**

Table (v)

The number of tax payers who will be left out of tax net if the tax slab is increased to Rs. 3 lakhs and to Rs. 4 lac

F.Y. 2008-09		F.Y. 2012-13	
Tax Slab	**Number of individual tax payers**	**Tax slab adjusted for inflation 10%**	**Number adjusted for increase in effective tax payers**
0-2 lakhs	2,02,72,445 (71.94%)	0-2.93 lakh	2,37,40,200 (71.94%)
0-3 lakhs	2,44,54,885 (86.79%)	0-4.4 lakh	2,86,40,700 (86.79%)
0-4 lakhs	2,59,45,923 (92.08%)	0-5.85 lakh	3,03,86,400 (92.08%)
Number of tax payers taken in sample size	2,81,76,624		
Total Number of Effective tax payers	3,01,01,260		3,30,00,000

Table (vi)

Thus, adjusting for inflation, an exemption limit of Rs.5 lacs would leave about 90% of taxpayers out of the tax bracket i.e. approximately 2,97,00,000 out of an estimated 3,30,00,000. The total collection from such people would be close to Rs.11000 crore.

1.8 CLASSIFICATION OF INCOME

All accruals and receipts in the nature of income, shall, in general, be classified into a two Parts:

- **SPECIAL SORCE**: The special sources are sources of income specified in the Part III of the First Schedule. ***The income from these sources will be liable to tax at a scheduled rate on gross basis. No deduction is allowed for any expenditure and the gross amount is subject to tax, generally at a lower rate***. This is the application of presumptive taxation. These special source incomes have been made applicable to mainly non-residents as only that portion of their total income which is sourced from India, is liable for tax under the Code.

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- **ORDINARY SOURCE**: The ordinary source of income applies to residents and non-residents carrying business through a permanent establishment in India and are calculated by computing the net income after deducting allowable expenditures from receipts.

1.9 AGGREGATION OF INCOME AND CARRY FORWARD OF LOSSES

SPECIAL SOURCES: A person may have many special sources.

- The first step will be to compute the income in respect of each of these special sources in accordance with the provisions of **the Schedule *IV***. The income so computed with respect to each of such special sources shall be called 'current income from the special source'.
- The second step will be to aggregate the 'current income from the special source' with the unabsorbed loss from that special source at the end of the immediate preceding financial year, if any. The result of such aggregation shall be the 'gross total income from the special source'. If the result of aggregation is a loss, the 'gross total income from the special source' shall be 'nil' and the loss will be treated as the 'unabsorbed current loss from the special source', at the end of the financial year. The 'gross total income from the special source' shall be computed with respect to each of the special sources.
- The third step will be to aggregate the gross total income from all such special sources and the result of this addition shall be the 'total income from special sources'.

ORDINARY SOURCES: A person may have many ordinary sources, the income from which would be classified under one of the heads of income as explained above.

- The first step will be to compute the income in respect of each of these sources. This could either be income or loss (negative income). For example, if a person carries on several businesses, the income from each and every such business will have to be separately computed.
- The second step will be to aggregate the income from all the sources falling within a head to arrive at the figure of income assessable under that particular head. The result of such computation may be a profit or a loss under that head. The aforesaid two steps will be followed to compute the income under each head.
- The third step will be to aggregate the income under all the heads to arrive at the 'current income from ordinary sources'.
- The fourth step will be to aggregate the current income with the unabsorbed loss at the end of the immediate preceding financial year, if any, to arrive at the 'gross total income from ordinary sources'. If the result of aggregation is a loss, the 'gross total income from ordinary sources' shall be 'nil' and the loss will be treated as the 'unabsorbed current loss from ordinary sources' at the end of the financial year. The 'gross total income from

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ordinary sources', so arrived, will be further reduced by incentives in accordance with sub-chapter *I* of Chapter *III*. The resultant amount will be 'total income from ordinary sources'.

2.0 COMPUTATION OF TOTAL INCOME

Income has been proposed to be classified as income from ordinary sources and income from Special Sources; Income from ordinary sources would comprise of income from employment, house property, business, capital gains and residuary sources. Income from special sources would refer to specified income of non –residents, winning from racehorses, lottery etc. However where the income of a non resident is attributable to a PE, then the same would not be considered as income from special sources.

2.1 "INCOME FROM EMPLOYMENT"

The significant change as compared to the Act is that ***Tax-Free limit for the medical reimbursement is proposed to be raised from Rs. 15,000 to Rs. 50,000***. ***The original proposal in the Code was to tax HRA and all medical perquisites and facilities currently tax-free under section 17(2) of the Act and HRA will be exempt up to specified limits***. Mercifully, better sense prevailed. Surely, no one likes to get sick and enjoy medical facilities and reimbursements from the employer. There is surely no perquisite element in this. It is an employee-welfare measure. A Government which has not succeeded in providing affordable health care to its population in 63 years after independence has no right to tax medical reimbursements. The limit of Rs. 15,000 is a product of the 1960s thinking. Raising the limit Rs. 50,000 is not a new thought.

The definition of perquisite under the Act in **section 17(2)** is an inclusive definition with exclusions of medical facilities and medical reimbursements. The proposed definition in **clause 314*(191)*** of the Code is an exhaustive definition with the present exclusions in respect of specified medical facilities and medical reimbursements retained with changes in monetary limits. To be a perquisite under the Code, what is received from the employer should satisfy the test of being "amenity, facility, privilege or service". The sub-clause (*a*) lists out " amenity, facility, privilege or service" in the nature of (*i*) accommodation; (*ii*) sum payable to effect assurance on life or annuity; (*iii*) sweat equity shares; and (*iv*) employee's obligation met by employer. The present definition in section 17(2) refers to "free ship" or "concession" in the matter of accommodation and also that sweat equity received "free of cost" or at a "concessional rate". ***These words are missing from the definition in Clause 314(191). So, there are misgivings that accommodation or sweat equity could be taxed in employee's hands even if the rent is the fair market rent or even if shares are allotted at market price. The word 'privilege' could be construed in very wide manner. A definite conclusion could be arrived at only after the Code comes into force and valuation rules under the Code are notified. It would be better***

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if the draft rules proposed to be made under the Code which have a pecuniary impact are placed in the public domain, so that the public could get a better understanding of the impact of the Code.

Contribution to approved superannuation fund exceeding Rs. 1, 00, 000 in respect of any employee is not taxable in employee's hands under the Code. The same will be disallowed in employer's hands. Thus, the Code proposes to reintroduce Fringe Benefit Tax through the disallowance route on such contributions.

The present exemption regime for commuted pension received by an employee, leave encashment received at the time of retirement, approved provident fund, approved superannuation fund, gratuity, VRS payments are proposed to be continued under the Code. ***The exemption limit for retrenchment compensation is proposed to be increased from Rs.50, 000 to Rs.5, 00, 000***. The difference in exemption for commuted pension between Government employees and non-government employees is proposed to be done away with. All employees will enjoy exemption up to one-third of commuted value of pension (if gratuity received) and exemption up to one-half commuted value of pension (if gratuity not received). The present exemption to commutation of pension received under pension scheme of insurers is proposed to be withdrawn, displaying unnecessary bias against the self-employed class.

The amount received by an employee from the New Pension Scheme will be tax-free. Contribution by employer to NPS up to 10% of salary will not be taxed as "income from employment". Employee contribution to NPS is entitled to deduction from gross total income. ***Thus, the present system of EET (Exempt-Exempt-Tax) regime for both employees and the self-employed under section 80CCD with exemption if rolled over – i.e. annuity purchased with money received in the financial year of receipt is sought to be changed to EEE (Exempt-Exempt-Exempt) only for employees. Again, why the same EEE regime should not be extended to self-employed is not comprehensible.***

2.2 INOCOME FORM HOUSE PROPERTY

The present system of presumptive taxation of both let out and not let out properties (except one self-occupied property/deemed to be self-occupied property) is proposed to be done away with. **Only gross rent derived from actual letting out of property shall be taxed after allowing deductions of:**

(A) Municipal taxes paid,
(B) 20% of gross rent towards repairs and maintenance,
(C) Interest on loan taken for the purposes of acquisition, construction, repair or renovation of the property; and
(D) Interest on loan taken to repay the loan in (*C*) above.

If property is let out for part of the year, the gross rent shall be the amount of rent received or receivable for such part of the financial year for which the house was not vacant. Properties not let out for any part of the year shall not be taxed on notional **"Annual Value"** basis, whether

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self-occupied or not. Consequently, no deduction shall be allowed in computing "income from house property" in respect of such house properties. However, in case of any one house property, ***which has not been let out (whether self-occupied or not)***, an individual or HUF will be eligible for deduction on account of interest on capital borrowed for acquisition or construction of such house property (subject to a ceiling of Rs. 1.5 Lacks) from the gross total income.

Item 33 of the Sixth Schedule to the Code provides that ***"Gross rent in respect of any one palace in the occupation of a Ruler"(sic)*** is exempt from tax if the annual value of the palace was exempt from income-tax before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, by virtue of the provisions of the Merged States (Taxation Concessions) Order, 1949, or the Part B States (Taxation Concessions) Order, 1950, or, as the case may be, the Jammu and Kashmir (Taxation Concessions) Order,1958. This exemption provision is not happily worded. If taxation under the Code is going to be on the basis of gross rent from actually letting out the house property, then any number of palaces in the occupation of a "Ruler" would be exempt from tax. The present exemption in section 10(*19A*) of the Act to "the annual value of any one palace in the occupation of a Ruler" makes sense. If a ruler occupies several palaces, annual value of one palace would be exempt from tax while annual value of other palaces in his occupation would be taxed. Since, the Code proposes taxation of actual gross rent derived from letting of a house property, the exemption to ***"Gross rent in respect of any one palace in the occupation of a Ruler" (sic)*** makes no sense except in a situation where the "Ruler" occupies a part of the palace and lets out a part of the palace, the gross rent from the part let out will be exempt.

2.3 Income from business

There are two possible models for computation of income from business. ***The first is the model where the taxable income is equal to business profits with specified adjustments. This mode is presently followed under the Act. However, this model does not provide for items of receipts which form part of business profit and deductions to be made there from. As a result, there are frequent disputes about taxability of receipts and deductions for expenses. The second model is the income-expenses model followed in countries like U.S.A., Canada, Australia and most Asian countries***. The computation of income from business under the Code under the general model will be based on the income-expenses model where the taxable income under this head will be equal to gross income *minus* allowable deductions. ***"As the Discussion Paper says "To the extent possible, the items of receipts and deductions for expenses are enumerated to reduce the scope for litigation"***. Thus, broadly, deductible business expenditure falls under three heads:

(A) Operating expenditure

(B) Financial charges

(C) Capital allowances-*i.e. depreciation, initial depreciation, terminal allowances, scientific research and development allowance for approved in house R & D facility, deferred revenue expenditure allowance and deduction of an amount in accordance with such deposit scheme*

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in respect of the person carrying on business of growing and manufacturing tea or coffee or rubber in India, as may be prescribed.

There is a long list of some ***43 heads of deductible operating expenditure with the 44th clause being a residual clause "any other operating expenditure"***. This is not in any way going to reduce litigation. People will only try to book expenditures under the 43 heads and the basic objection that was raised against FBT and led to its abolition now applies to these 43 heads also. To borrow the words of a former Finance Minister "you have to avoid inventive accounting practices. People can shift the classification of expenditure from one head of account to another." The tax auditors and Assessing Officers will have nightmares scrutinizing the expenditure heads. The tax audit reports will be voluminous and will have to be carried in trucks. So, if the Finance Minister is serious in avoiding litigation, he should move to a regime of tax on pre-tax profits as per audited accounts (the only tax and not as a MAT) for assesses for whom audit is mandatory under any law and a presumptive regime for small non-corporate assesses. The only permissible adjustments to pre-tax profits should be for transactions not carried out at arm's length (*i.e.* transfer pricing rules) based on auditor's certificate and for auditor's qualifications in audit report. May be, a statutory "Financial Reporting Board" consisting of CAs and other financial experts may be set up to scrutinize annual reports of entities at random to see whether the accounting standards and auditing standards have been complied with and based on the Board's report assessment/re-assessment proceedings and disciplinary proceedings against negligent auditors can be initiated. The Government needs to trust accounts prepared and audited according to accounting standards notified by it. That is the way to reduce litigation and not this childish exercise of listing out 43 heads of deductible expenditure.

There are certain other alarming features as well. For instance, at present, **section 2(*24*)** provides that any sum received from employees as contributions to PF, ESI etc. shall be taxed as income. **Section 36(1)** provides that the employees' contributions so received should be deposited within the due date prescribed under the relevant Act, rule, order etc. The Code provides that "amount accrued to, or received by, the person from his employees as their contribution to any fund for their welfare" shall be part of gross earnings from business. Deduction will be allowed of contribution to any fund for the welfare of employees *to the extent,—*

(A) ***The amount has been received from his employees as their contribution to the fund; and***
(B) ***It is actually paid***

The Fringe Benefit Tax on superannuation fund contributions by employer exceeding Rs. 1 lac in respect of any employee is sought to be brought back through the disallowance route.

2.4 CAPITAL GAINS

- Investment Asset has been segregated in to two segments:

  (a) Investment asset held for 'more than one year' from the end of financial year in which the asset is acquired &

  (b) Investment asset held for 'less than one year' from the end of financial year in which

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The asset is acquired.

- Capital gains to be taxed as ordinary income at rates applicable to the tax payer whether resident or non-resident.

(A) Investment Asset held for more than one year from the end of financial year in which the asset was acquired	
Investment Asset being **Listed Equity Shares or** **Units of Equity oriented fund**	• Capital Gain shall be computed after allowing deduction with certain specified percentage which will to be notified later • The loss arising on transfer of such asset shall also be scaled down on similar lines. • Benefit of Indexation shall not be available • Appropriate transition regime shall be provided from shift of The current Nil tax scheme. It has also been clarified that investors holding long term shares till 31st March 2011 will not be subject to the long term capital gain tax and stock prices as on 1st April 2011 will be the new base price for computing capital gains tax.
Other Investment Asset	• Benefit of indexation shall be available. However, the base rate for determining the cost of acquisition will shifted from 1.4.1981 to 1.4.2000 • Unrealized gain between 1.4.1981 and 1.4.2000 will not be liable tax • The proposal to introduce Capital Gain Saving Scheme dropped.

(B) Investment Asset held for less than one year from the end of financial year in which the asset was acquired
• Capital gain shall be computed without any specified deduction or indexation • Capital gain shall be charged as per the applicable rate to the taxpayer

- ***The income arising on purchase and sale of securities by the FII's shall be deemed to be income chargeable under the head capital gains***. The capital gains arising to FIIs shall not be subjected to withholding tax however FII's will be required to pay tax by way of Advance Tax on such capital gains.
- ***Security Transaction Tax is proposed to be retained***.

Capital gains arise under the Code on the transfer of an "Investment Asset" and any capital asset.

According to **clause 314*(141)*** of the Code, "investment asset" means,—

(A) Any capital asset which is not a business capital asset;

(B) Any security held by a Foreign Institutional Investor;

(C) Any undertaking or division of a business;

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"Capital Asset" means property of any kind held by an assesses other than business trading asset [Clause 314*(43)*] "business trading asset" means stock-in-trade, consumable stores or raw materials held for the purposes of business **[Clause 314(*42*)]** "Business Capital Asset" means—

(*A*) *Any capital asset self-generated in the course of business;*

(C) Any intangible capital asset in the nature of—

(a) Goodwill of a business,

(b) A trade mark or brand name associated with the business,

(c) A right to manufacture or produce any article or thing,

(d) Right to carry on any business,

(e) Tenancy right in respect of premises occupied by the assessee and used by him for the purposes of his business, or

(f) License, right or permit (by whatever name called) acquired in connection with, or in the course of, any business;

(g) Any tangible capital asset in the nature of a building, machinery, plant or furniture; or

(h) Any other capital asset not being land connected with or used for the purposes of any business of the assesses.

Thus, "Investment Asset" will not include the following:

(A) Any capital asset self-generated in the course of business;
(B) Any intangible capital asset in the nature of—

(i) Goodwill of a business,

(ii) A trade mark or brand name associated with the business,

(iii) A right to manufacture or produce any article or thing,

(iv) Right to carry on any business,

(v) Tenancy right in respect of premises occupied by the assesses and used by him for the Purposes of his business, or

(vi) License right or permit (by whatever name called) acquired in connection with, or in the course of, any business;

(C) Any tangible capital asset in the nature of a building, machinery, plant or furniture; or

(D) any other capital asset not being land connected with or used for the purposes of any business of the assesses;

(D) *"Business trading asset"-i.e. stock-in-trade, consumable stores or raw materials held for the purposes of business.*

Therefore, transfer of the above items in (A) to (E) above will give rise to business income and not capital gains.

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Securities held by FIIs will be deemed to be investment assets and therefore, profits arising from sale of securities by FIIs will not be taxed as business profits.

It is significant to note that under the Act, by virtue of **section 2(*14*)**, transfer of the following does not give rise to taxable capital gains:

- **Personal effects**
- **Rural agricultural land**
- **Gold Deposit Bonds under the 1999 Scheme issued by Central Government.**

The definition of **'Investment Asset'** does not exclude the above three items. Nevertheless, the capital gains arising on transfer of the above assets will continue to be exempt tax under the Code as item 32 of the **Sixth Schedule** proposes to exempt the same.

Besides, 100% deduction is available on capital gains arising from transfer of equity shares or equity-oriented mutual funds subjected to STT after holding them for more than one year **[Clause51(*2*)]**. Thus, the present exemption to what is now called **"Long-Term Capital Gains"** from equities and mutual funds subjected to STT continues under the Code. According to **clause 51(*2*)** of the Code, in the case of transfer of an investment asset, being an equity share in a company or a unit of an equity oriented fund and such transfer is chargeable to securities transaction tax under ***Chapter VII of the Finance (No. 2) Act, 2004***, in addition to the deductions in clause 51(*1*), the following deductions shall also be allowed as per the following table:

Where the asset (such equity share/unit of mutual fund) is held for a period of more than one year before transfer	***Where the asset (such equity share/unit of mutual fund) is held for a period of one year or less before transfer***
In this case, if the income after giving effect to deductions in clause 51(*1*) is a positive income, a deduction of 100% of the income so arrived at shall be allowed. In other words, capital gains arising from transfer of equity share in a company or a unit of an equity oriented fund (where transfer is subjected to STT) shall continue to be 100% tax-free under the Code. If the income computed after giving effect to clause 51(*1*) is a negative income, 100% of the income so arrived at (*i.e.* loss) shall be reduced from such income (*i.e.* loss). In other words, no relief in case of loss by way of set-off/carry forward.	In this case, if the income after giving effect to deductions in clause 51(*1*) is a positive income, a deduction of 50% of the income so arrived at shall be allowed. The balance 50% will be merged with total income and taxed at applicable rate of 10%/ 20%/30% in case of individual/HUF. Effectively, this will mean the effective tax rate will be 5%/10%/ 15%. If the income after giving effect to deductions in clause 51(*1*) is a negative (*i.e.* loss), the loss will also be scaled down by 50%.

The definition of **"Transfer"** under the Code, inter alia, includes "Distribution of Money or the asset to a participant in an unincorporated body on account of his retirement from the body". This clause seeks to overcome the decision of the Supreme Court in Addl. CIT v. Mohanbhai Pamabhai [1987] 165 ITR 166 wherein the Court affirmed the decision of the Gujarat High Court. The Gujarat High Court had held that where a partner is paid his share on retirement from partnership which was worked out after taking proportionate value of his share in partnership assets after deduction of liabilities and prior charges and including therein the proportionate share in value of goodwill, no part of the amount received was taxable as capital gains.

In case of transfer of any investment asset being land or building, the Code proposes to take the stamp duty value as the full consideration received or accruing on transfer. This is irrespective of whether the consideration shown in the agreement is higher or lower than the stamp duty value and irrespective of whether the stamp duty value exceeds the fair market value on the date of the transfer. Presently, under section 50C,An assesses is allowed to claim before the Assessing Officer that the valuation adopted by the stamp duty authorities exceeds the fair market value on the date of transfer. If the stamp duty value is disputed in appeal or reference or revision before any other authority/Court/High Court, the Assessing Officer may refer to Valuation Officer to determine the fair market value of the asset. This right of the assesses is sought to be taken away by the Code.

2.5 DEDUCTION FROM TOTAL INCOME

In respect of the present section 80C deductions, the proposals in the Code are :

(A) Deduction to approved fund (approved provident fund/approved superannuation fund/approved gratuity fund/approved pension fund) to the account of individual/spouse/children deductible to the extent of Rs. 1, 00, 000 (clause 68).

(B) Life Insurance Premium, Health Insurance and fees for education of children – deduction for all these together not to exceeding Rs. 50,000 (clause 69). Thus, total deductions proposed under the Code are Rs. 1, 50, 000 for individuals. For HUFs only deduction up to Rs. 50,000 in (b) above is available. No deduction is allowable for re-payment of principal of housing loan/investment in NSC/ELSS under the Code.

Specific provision for protective assessment

Clause ***XVII*** of the Code deals with the avoidance of double taxation and provides that, except where for the purposes of protecting the interests of revenue, it is necessary to do so, the following rules shall apply:

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- Any income which is included in the total income of a person for any financial year shall not be so included again in the total income of such person for the same or any other financial year.
- Any income which is includible in the total income of any person shall not be included in the total income of any other person.

The above rules shall also apply subject to other provisions of the Code.

It is not exactly clear what the phrase: ***"Except where for the purposes of protecting the interests of revenue, it is necessary to do so" means. Probably, it refers to "Protective Assessment" or what is also called "Jeopardy Assessment"***. At present, there is no specific provision in the Act about protective assessment or precautionary assessments. It appears that the intent behind the words "Except where for the purposes of protecting the interests of revenue, it is necessary to do so" seems to be to incorporate an express provision allowing "protective assessment".

2.6 TAXATION OF NON-PROFIT ORGANISATIONS (NPO's)

- NPO's already registered under the Income-tax Act, 1961 would not be required to apply for fresh registration under the DTC, however, some additional information to be provided to Income Tax Authorities.
- The phrase 'charitable purpose' will be retained in place of 'permitted welfare activity'.
- Only cash system of accounting has to be followed.
- Donation of 'public religious institutions' will be exempt from tax subject to fulfillment of certain conditions. However donation to these institutions will not be entitled for any deduction in the hands of the donor.
- 'Partly religious and partly charitable institutions' will also be treated as NPOs and the income from the public religious activity shall be exempt subject to fulfillment of certain conditions.
- Income from charitable activities will be liable to tax. Income from other sources
- Presently, if rural agricultural land is received by an individual or HUF without consideration, the same is not liable to tax under section 56(2)(vii) of the Act as income from other sources. This exemption is sought to be withdrawn by the Code. Set off or carry forward of losses.
- The losses will be allowed to be indefinitely carried forward for set off against profits in the subsequent financial years. Loss under the head "capital gains", loss from speculative business and loss from the activity of owning and maintaining horses for the purpose of horse race are proposed to be ring-fenced. The loss under the head 'Capital gains' shall not be allowed to be set off against income under other heads. Loss from speculative business shall not be allowed to be set off against income under other heads or income from non-

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speculative businesses. The loss from the activity of owning and maintaining horses for the purpose of horse race shall not be allowed to be set off against income under other heads or against other income under the head "income from residuary sources".

2.7 WEALTH-TAX

Presently, under the 1957 Act, wealth ***tax is levied on the excess of net wealth over Rs.30 Lac. This threshold is proposed to be increased in the Code to Rs.1 Crore. The liability to pay wealth tax under the 1957 Act is on individuals, HUFs and companies. Under the Code, every person other than a non-profit organization is liable to wealth tax.***

The following items which do not attract wealth tax at present shall attract wealth tax under the Code:

- Watch having value exceeding Rs.50,000,
- Deposits of individuals and HUFs in banks located outside India,
- Such deposits not recorded in books of account in case of other persons,
- Helicopter (not used in business of running on hire or held as stock-in-trade),
- Equity or preference shares held by a resident in a controlled foreign company,
- Interest in a foreign trust or other body located outside India other than a foreign company.

Under the 1957 Act, cash in hand in excess of Rs.50, 000 is includible in net wealth. This limit is proposed to be increased to Rs. 2, 00, 000.

One wonders whether these changes could not be carried out in 1957 Act through the Finance Bill.

Wealth-Tax on a slab basis

Net Wealth (in Rs crore)	% of Wealth Tax
0 – 5	Nil
5 – 20	0.5%
20 – 50	0.75%
Beyond 50	1%

Table (vii)

2.8 PERSONAL TAXES

- **Changes in income slabs** which will result in incremental savings in tax.
- **The concept of "Not ordinarily resident" is removed**. The condition of 730 days has been retained to determine the taxability of overseas income of an individual
- **A person not entitled to HRA** is allowed a deduction of rent paid up to 10% of GTI or Rs. 2000 per month & other conditions as may be prescribed
- **Exemption for medical expenses** has been increased to Rs. 50, 000.

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- **Contribution to approved funds** is deductible to the extent of INR 1 lac.
- **Deduction for insurance premium** (not exceed five percent. of the capital sum assured), Health Insurance covered & Tuition fees to the extent of INR 50,000.
- **Wealth tax** to be levied at 1% for wealth in excess of INR 10 million Capital gains.
- **Income from all investment assets** to be computed under the head „Capital gains". Investment asset to include any capital asset which is not a business capital asset, any security held by a Foreign Institutional

2.9 CORPORATE TAX

- **Under the first draft of the DTC, it was proposed that a company shall pay tax on its gross assets** at the rate of 2 percent (0.25 percent in case of banking companies) if the tax liability under provisions of the DTC is less than the tax on gross assets. The revised draft of the DTC reintroduces profit-based MAT. The rate has been increased from 18 percent to 20 percent
- **Computation of book profits** broadly similar to that under the Act
- **DTC does not specifically provide for credit** of MAT paid under the Act
- **Holding company**
- **MAT now applicable to SEZ** developers and SEZ units
- **SEZ developers now subject to DDT** similar to SEZ units.
- **Security Transaction Tax** to continue

Computation of Minimum Alternative Tax (MAT)

Gross Profit vis-à-vis Book Profit

- Computation of book profits broadly similar to existing law
- Credit for tax paid under DTC 2010, would not be available for the future years. MAT now applicable to SEZ developers and units in an SEZ

TAX RATES

Category	Existing rate	As per DTC
Income Tax Indian Company	30 percent	30 percent
MAT	Levied at 18 percent of the adjusted book profits in case of companies where income-tax payable on taxable income according to the normal provisions of the Act is lower than the tax @ 18 percent on	Levied at 20 percent of the adjusted book profits in case of companies where income-tax payable on taxable income according to normal provisions of the DTC is lower than the tax @ 20 percent on book profits

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	book profits	
Dividend Distribution Tax	15 percent	15 percent
Income distributed by mutual fund to unit holders of equity-oriented funds	Not applicable	5 percent of income distributed
Income distributed by life insurance companies to policy holders of equity- oriented life insurance schemes	Not applicable	5 percent of income distributed

Table (viii)

3.0 INTRNATIONAL TAX

- ***A foreign company is considered to be a resident in India if its place of effective management at any time in the year is in India***

Place of effective management is defined as

- *The place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or*
- *In a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions.*

Any other person is considered to be a resident in India if its place of control and management at any time in the year is situated wholly or partly in India.

Category	Existing rate	As per DTC
Foreign company	40 percent	• 30 percent • Additional branch profits tax of 15 percent (on post tax income) for income attributable directly or indirectly to permanent establishments of foreign companies in India

Table (ix)

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3.1 GRANDFATHERING PROVISIONS FOR SEZ DEVELOPERS AND SEZ UNITS

Grandfathering of profit linked incentives under the Income-tax act, 1961 to continue for SEZ developers notified on or before 31 March 2012. In case of SEZ units, the deduction would be permissible for units commencing operations on or before 31 March 2014

3.2 ANTI- ABUSE PROVISIONS

3.2.1 GENRAL ANTI-AVOIDACE RULES

The characteristics of the originally proposed rules have been retained. ***Additionally it is proposed that an arrangement would be presumed for obtaining a tax benefit would include reduction in tax base including increase in losses. The provisions would be applicable as per the guidelines to be framed by the Central Government. Further the definition of lacking commercial substance has been amended to clarify that obtaining tax benefit cannot be the only criteria for applicability of GAAR.***

The following safeguards are also proposed for invoking **GAAR** provisions:-

- The Central Board of Direct Taxes will issue guidelines to provide for the circumstances under which GAAR may be invoked.
- GAAR provisions will be invoked only in respect of specific arrangements where tax avoidance is beyond a specified threshold limit.
- The forum of Dispute Resolution Panel (DRP) would be available where GAAR provisions are invoked.

3.2.2 CONTROLLED FINANCE COMPANY (CFC) RULES

As indicated in the revised discussion draft, ***CFC rules have been incorporated to provide for the taxation of income attributable to a CFC to be taxed in the hands of the resident***. A foreign company would be considered as a CFC which

- For the purposes of tax is a resident of a country or territory with a lower rate of tax.
- The shares of the company are not traded on any stock exchange.
- One or more persons individually or collectively exercise control over the company.
- It is not engaged in any active trade or business.
- The specified Income exceed of Rs. 2.5 Crores.

Rules pertaining to the computation of the income attributable to the CFC which would be required to be added to the income of the resident have been provided.

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3.3 TAX INCENTIVES

The DTC 2010 provides for expenditure based incentives where in capital expenditure incurred by the specified business would be allowed as a deduction. ***Specified businesses, amongst others would include generation, transmission or distribution of power, developing or operating and maintaining any infrastructure facility, operating a maintaining a hospital in a specified area, SEZ developers and units established in an SEZ, exploration and production of mineral oil or natural gas, setting up and operating a cold chain facility, developing and building a housing project under a scheme of slum redevelopment etc.***

3.4 TAX TREATMENT OF SAVINGS– EXEMPT-EXEMPT TAX (EET) VIS-À-VIS EXEMPT EXEMPT-EXEMPT (EEE) BASIS

- **It is proposed to provide the EEE** method of taxation on specified savings such as Government Provident Fund (GPF), Public Provident Fund (PPF), Recognized Provident Funds (RPFs) approved Pension scheme, approved pure life insurance products and annuity schemes.
- **For other instruments, EET regime** will apply. However, investments made before commencements of DTC which currently enjoy EEE method of taxation would continue to be so eligible for the remaining duration of the investment

3.5 DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAA) VIS-À-VIS DOMESTIC LAW

- ***The domestic law or the relevant DTAA, whichever is more beneficial to the taxpayer will be applied.***

- ***A concept of 'limited treaty override' is being introduced whereby a treaty will prevail unless the following provisions are invoked:***

  - General Anti Avoidance Rule ('GAAR')
  - Controlled Foreign Corporation ('CFC') Regulations
  - Branch profits tax is levied
  - It is clarified that this limited treaty override would not deprive a tax payer of any intended benefits available under an applicable tax treaty.

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3.6 Compliance and procedural provisions

3.6.1 Return of income and assessment

- **The due date for filing the return of income** for non-corporate taxpayers is 30 June of the year following the financial year and for other assesses is 31 August
- **Belated/revised return can be filed** within 24 months from the end of the financial year. In the draft DTC released in 2009, the due date for belated/revised returns was 21 months from the end of the financial year. The revised provision is in line with the current tax law.
- **Time period for furnishing a return** in response to a notice pursuant to non filing of a return reduced to 14 days.
- **An acknowledgement** to be issued on receipt of each return of tax bases and initial processing to be completed within 12 months from the month in which the return is filed.
- **Reference to procedure** for selection of cases for scrutiny assessments in line with risk management strategy as proposed in the draft DTC released in 2009 dropped in the revised DTC.
- **Time limit for making** an application for rectification of mistake in an order/intimation has been increased to four years from the end of the financial year in which the order/intimation is passed.
- **Assessment to be completed** within 21 months from the end of the financial year in which the return was 'due' (33 months in respect of the cases referred to transfer pricing officer).
- **The time limit** for issue of notice for selection of cases for scrutiny has been extended to six months from the end of the financial year in which the return is furnished.
- **Assessment of taxes** after search and seizure operations to be treated as tax base escaped assessment and would be subject to re-opening.
- **A taxpayer failing** to pay due tax/interest on self assessment before filing of return to be treated as assesses in default.
- **Threshold limits** for tax audit revised as under:
  - Gross receipts exceeding INR 2.5 million for person carrying on profession.
  - Total turnover or gross receipts exceeding INR 10 million for person carrying on business.
  - **In case of change in officer or jurisdiction,** the succeeding officer has to continue any proceedings from where the earlier officer has concluded the proceedings. This is likely to reduce the hardships to the taxpayers in case of change in officers.

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- **Disallowance of expenditure for non-withholding** of tax or non-payment of tax would not be applicable if such tax is paid on or before the due date of filing of return of income. Further, if tax is paid after the due date of filing of return of income for such year, such expenditure would be allowed in the financial year in which the tax is paid

3.7 APPEALS

- **The CIT(A) and the Income Tax Appellate Tribunal** cannot condone delay in filing of an appeal if delay exceeds a period of one year from the date specified
- **The Income Tax Appellate Tribunal** may now so Moto amend any order passed by it, at any time within a period of four years from the date of the order with a view to rectifying any mistake apparent from the face of the record
- **Concept of National Tax Tribunal absent**. Appeals against the order of the Income-tax Appellate Tribunal will lie before the High Court and not the National Tax Tribunal as envisaged earlier
- **Appeals against order of CIT, CIT(A) or an AO** in pursuance of the directions of the DRP will lie before 'Authority for Advance Rulings' in case of Public Sector Companies

3.8 Revision of orders by CIT

- **Circumstances have been specified** where the CIT can exercise revisionary powers
- **CIT cannot cancel an assessment** and direct a fresh assessment during revisionary proceedings
- **An appeal against the order passed** by the CIT of Income-tax revising an assessment order prejudicial to revenue will lie before the Income tax Appellate Tribunal
- **Powers given to CIT** to revise orders where the revision is not prejudicial to the assesses.

3.9 PENALITIES and PRISECUTION

- **Maximum penalty reduced** to two times of the tax sought to be evaded
- **In case of individuals and cooperative societies,** penalty to be based on applicable marginal rates
- **Penalty orders** can also be passed by CIT and CIT(A)
- **CIT's power to reduce** or waive penalty and grant immunity from penalty and prosecution removed
- **Every offence under the DTC** is punishable with both imprisonment and fines apart from monetary penalties.

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4.0 NPO RELATAED PROVISIONS

- **Total income of NPOs to be computed** as gross receipts less outstanding as per cash basis of accounting. In case of companies registered under Section 25 of the Companies Act, 1956, total income to be computed as per mercantile system
- **Outgoings inter alia to include amount** accumulated or set apart for charitable activity, for up to three years, to the extent of 15 percent of the total income (before accumulation) or 10 percent of gross receipts, whichever is higher, and invested in the specified modes
- **Total income of NPOs (post accumulation)**, in excess of INR 100,000, liable to tax @ 15 percent
- **NPOs taxable @ 30 percent** of their net worth, if they convert into or merge with any other form of organization or fail to transfer their assets to another NPO on dissolution within the prescribed time limit
- **Public religious trusts fulfilling** certain conditions and notified entities of public importance not liable to income-tax
- **NPOs to make application to the CIT** in the prescribed form. Application not required by NPOs which are granted approval or registration under the Act, subject to fulfilment of prescribed conditions
- **Powers of the CIT regarding** the cancellation or withdrawal of the approval extended to cases where activities of NPO are not in accordance with any law applicable to it or under which it was registered.

4.1 OTHER RESIDUARY PROVISIONS

Income from residuary sources

The following items over specified threshold included as income from residuary sources:

- ***Receipt of money and any specified property (shares, securities, jewellery, etc.), not being an immovable property, for inadequate or without consideration by an individual or a Hindu undivided family***
- ***Receipt of immovable property without consideration by an individual or a Hindu undivided family***
- ***Receipt of shares of a closely held company for inadequate consideration or without consideration by a firm or a company.***

Settlement of cases

- **Settlement Commission provisions** have been re-introduced

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- **The Settlement Commission** shall admit an application after considering, inter-alia, the nature and circumstances of the case or the complexity of the investigation involved therein
- **Settlement Application** can be made only if:
  - **Return of tax bases** has been furnished by the applicant under DTC
  - **Additional tax payable** on additional income disclosed is greater than INR 1 mn. In case of "search" matters, additional tax payable should be greater than INR 5 mn
  - **The additional tax payable** together with interest is paid on or before filing of application

- **Settlement application** can be made in case if proceedings are pending before the AO, subject to specified exceptions
- **The Settlement Commission** shall within 20 days from the date of receipt of the application, either reject or allow the application, by passing an order in writing. If no such order passed, the application shall be deemed to be admitted
- **The Settlement Commission** shall pass the final order within a period of 18 months from the end of the month in which the application was made
- **Every order of settlement passed** shall be conclusive as to the matters stated therein and shall not be reopened in any proceedings under this DTC or under any other law for the time being in force
- **The Settlement Commission may grant immunity** with respect to the imposition of any penalty or prosecution for any offence under DTC or under the Act or Wealth tax Act, 1957 subject to certain conditions.

4.2 OTHER PROVISIONS

- Certain restrictions placed on the powers of the CBDT which were proposed in the draft DTC released in 2009 have now been dropped. This is in line with current tax law.
- The revised DTC has dispensed with the provisions relating to publication of all internal orders, instructions, directions and circulars issued by CBDT in a tax bulletin or on the intranet of the department.

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4.3 CONCLSION

As stated earlier, DTC-2010 (DTC-II) is big document of 405 pages spread over 20 chapters. Obviously all aspects of this Code bill, many of which are of a procedural nature, cannot be covered in an article of this size. Yet attempt has been made to consider all important aspects briefly. The project is like a window for peeping in the enormous provisions of the future law of the country to generate interest for study in detail. If this objective is fulfilled and the write up generates interest in the readers in regard to DTC-II, the labour put in would be considered to be amply rewarded.

However, the exercise for drafting a new tax code for the country, it needs to be said with utmost respects to those who labored on it, has not been carried out well in accordance with past practices and international precedents.

Even after DTC-II, re-thinking is inevitable. The instance of this is clarification that LTC benefit would be exempt is issued only after 2/3 days of the issue of DTC-II! Many more aspects are expected to be contested when the Bill goes to the Parliamentary Standing Committee of Finance Ministry and in public debates again for making changes in DTC-II. The DTC is proceeding on lines of Companies Bill which is under discussion since last 14 years and still not enacted! This way of making tax reforms is hardly conducive to the development of healthy tax culture in the country and bringing certainty in tax laws. Anyway, the DTC-II seems to have become a *fate accompli* as FM seems to have it a prestige issue. A much robust, healthy and simple and publically acceptable Code could have been possible, if the work could have been entrusted to the Law Commission of India (who drafted the Act) or to a specially constituted commission headed by a Supreme Court Judge!

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4.4.1 Annexure I – Key depreciation rates

Sr. No	Class of assets	Block of assets	Depreciation allowance as a percentage of WDV	
			DTC 2009	DTC
1.	Building	Buildings used as, or for hotels or boarding houses, railway stations, airports, sea ports, bus terminals, hospitals or convention centers	15	15
		Buildings acquired on or after the 1st day of September, 2002 for installing machinery and plant forming part of water supply project or water treatment system and which is put to use for the purpose of business of providing infrastructure facilities under clause (i) of Section 80-IA(4)	10	10
2.	Vehicles	Commercial vehicles for the purpose of business or profession -depending on the date of acquisition and put to use	15	15
3.	Machinery and Plants	Returnable packages used in field operations (above ground) distribution by petroleum or natural gas concerns Plant used in field operations (below ground) by petroleum or natural gas concerns	15	15

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		Machinery and plant, acquired and installed in a water supply project or a water treatment system and which is put to use for the purpose of the business of providing infrastructure facility	15	15
4.	Scientific research assets	All assets, other than land, used for scientific research	100	100
5.	Intangible Asset *Depreciation shall be 100 percent if WDV of assets is INR 1 lac or less	Asset or project constructed, erected or set up by the assesses if, - benefit or advantage arises to the assesses over a fixed period not exceeding 10 years and the asset is not owned by the assesses	20	20
		Asset or project constructed, erected or set up by the assesses if benefit or advantage arises to the assesses over a fixed period exceeding 10 years and the asset is not owned by the assesses	15	15

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4.4.2 Annexure II – Schedules to DTC

Schedule	What it contains
First	Rates of tax
Second	Rates of other taxes (MAT, DDT, Wealth Tax, etc.)
Third	Rates of tax deduction at source for residents
Fourth	Rates of tax deduction at source for non-residents
Fifth	Procedure for recovery of tax
Sixth	List of exempt income
Seventh	Persons not liable to tax
Eighth	Profits of life insurance business
Ninth	Computation of income from Special Source
Tenth	Computation of profits of business of operating qualifying ships
Eleventh	Computation of profits of business of mineral oil and natural gas
Twelfth	Computation of profits of Special Economic Zone Developers and Units
Thirteenth	List of specified businesses notified by the Central Government
Fourteenth	Computation of income subject to presumptive taxation
Fifteenth	Depreciation schedule
Sixteenth	Deduction for contributions and donations to specified persons
Seventeenth	Determination of cost of acquisition of investment assets acquired by specified modes
Eighteenth	List of minerals and groups of associated minerals
Nineteenth	Approved provident fund, superannuation fund and gratuity fund
Twentieth	Computation of income attributable to controlled foreign companies
Twenty-first	Orders appealable before CIT (Appeals)
Twenty-second	Deferred revenue expenditure allowance

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4.4.3 Glossary

AO	Assessing Officer
AOP	Association of Persons
APA	Advanced Pricing Agreement
BOI	Body of Individuals
CBDT	Central Board of Direct Taxes
CFC	Controlled Foreign Company
CIT	Commissioner of Income tax
DDT	Dividend Distribution tax
DRP	Dispute Resolution Panel
DTAA	Double Tax Avoidance Agreement
DTC	Direct Taxes Code
EEE	Exempt-Exempt-Exempt
FTS	Fees for Technical Services
FII	Foreign Institutional Investors
FTS	Foreign Tax Credit
GAAP	Generally Accepted Accounting Principles
GAAR	General Anti Avoidance Rules
IFRS	International Financial Reporting Standards
MAT	Minimum Alternate Tax
NPO	Non Profit Organizations
PE	Permanent Establishment
SEZ	Special Economic Zone
STT	Securities Transaction Tax
The Act	The Income-tax Act, 1961
VCU	Venture Capital Undertaking
WOS	Wholly Owned Subsidiary

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