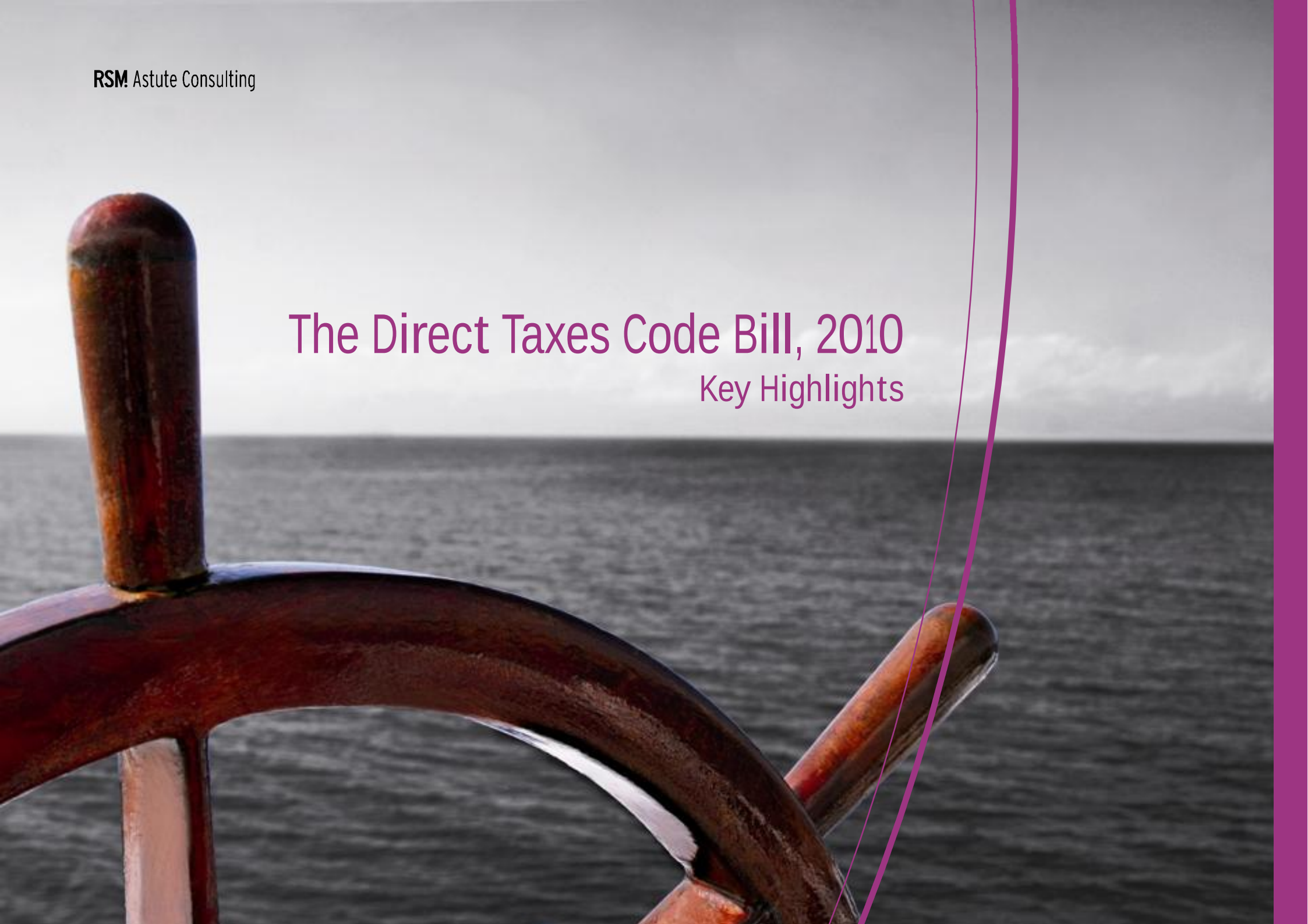


The Direct Taxes Code Bill, 2010

Key Highlights



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Introduction

The Direct Taxes Code, 2010 ("DTC") Bill has been presented on 30 August 2010 in Lok Sabha. It would be effective from 1 April 2012 as against 1 April 2011 as intended earlier. The DTC is replacement of the present Income Tax Act, 1961 ('IT Act') and the Wealth Tax Act, 1957 ('WT Act') and seeks to consolidate both the Acts. The present IT Act, is about 50 years old and it was high time to replace it in view of innumerable amendments to it over a period of time.

The primary thrust of DTC is on certainty and continuity. This is evident from the marginal liberalization of tax rates, continuation of MAT on book profits instead of assets based tax, continuation of EEE system of taxation for specified savings. Continuation of exemption of long term capital gains and retaining Dividends Distribution Tax at 15%. It has chosen the path of stable reforms rather than indulging in path-breaking radical reforms.

The Draft DTC along with a Discussion Paper was released by Ministry of Finance on 12 August, 2009 for public comments. It contained number of stringent proposals viz. assets based MAT, treaty override, seizure of goods during search in case of gems and jewelry entity etc. In response to the same, a number of valuable inputs on the proposals outlined in the draft DTC were received from a large number of various organizations and individuals.

The Ministry of Finance examined and identified the major issues in response to the comments received from the Public and most of the concerns have been addressed in the Revised Discussion Paper on the DTC issued on 15 June 2010 for the purpose of final discussion. Based on the additional suggestions and responses from the general public, the final DTC has been framed and placed before the Parliament.

The basic exemption limit for personal taxation has been increased from Rs. 1,60,000 to Rs. 2,00,000 and for senior citizens to Rs. 2,50,000. However, removal of increased exemption limit for women is not welcomed measure especially when the Women Reservation Bill is pending for approval. The applicability of highest tax slab rate for individuals of 30% for income above Rs. 10,00,000 is in line with the need of hour in view of fall in the value of rupee due to high inflation and fiscal deficit.

As per the DTC provisions, a citizen of India or person of Indian origin being outside India and visiting India will be treated as resident if his stay in India is 60 days or more during the relevant financial year against 182 days presently and his stay in India during the immediately preceding 4 financial years exceeds 365 days. This is major set backs for NRIs regularly visiting India. It is not clear whether such amendment is intentional or is inadvertent. Further, the category of 'Not Ordinarily Resident' has been abolished and only two categories of taxpayers are proposed viz. residents and non-residents. The concept of "resident but not ordinary resident" (RNOR) for individuals and HUFs is replaced by providing specific exemption from the total income of an individual with respect to the income sourced outside India and not derived from a business controlled or a profession set up in India on the same lines as currently applicable to RNOR.

With the abolition of surcharge and education cess for corporate, the highest tax rate for corporate would stand reduced to 30% from 33.62%. However, this may not please corporate sector as it was expected to be around 25% as proposed in the draft DTC. Further, the increase in MAT rate to 20% is illogical in the light of the fact that now most of the incentives are investment linked instead of profit linked. Bringing tax rate for foreign company at par with Indian company addresses the long outstanding issue of 'Non-Discrimination' of non-residents. Also, introduction of foreign branch tax @ 15% is on line with DDT of 15%.

The DTC proposes to continue exemption of long term capital gains tax on transfer of listed shares which are subject to STT. This is a big relief for the investors as the earlier proposal of draft DTC was to tax such gains at rates ranging from 9% to 15%. Further, the Short Term Capital Gains tax on transfer of listed shares, which are subject to STT is proposed to be taxed only on 50% of the gain at the normal applicable tax rates resulting in effective tax rate of 5, 10 or 15% depending on the tax slab of the investor. This gives relief to small investors while for big players, it is at par with present tax rate of 15%. Further, for capital assets (other than shares), the indexation benefit will be available even it is held for more than one year from the end of financial year in which it is purchased compared to 3 years from the date of purchase as per the present regulations.

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Introduction

The DTC has announced continuation of tax holidays to SEZ developers as well as to SEZ units. However, the condition is that SEZ developer should be notified on or before 31 March 2012 and SEZ units should commence operations on or before 31 March 2014. Further, units in SEZs and developers of SEZ will be liable for Minimum Alternative Tax @ 20%, a move, which would negate the benefit of the above exemption for companies and is clear deviation from what is promised under SEZ Act, 2005. One may witness increasing use of LLPs and partnership firms to mitigate this.

Although the MAT credit will now be allowed to be carried forward for 15 years as against 10 years earlier, most standalone SEZ units are unlikely to benefit from this extension. Further SEZ Developer shall also be liable to pay DDT as per the DTC Bill which at present is exempt. The other major amendment with regard to incentive is that now under the DTC, the incentives are investment linked rather than profit linked as presently.

However, the assessee enjoying profit-based deductions under certain sections of the existing law (such as infrastructure sector etc.) have been grandfathered so as to enjoy profit-based deductions even after 1 April 2012 for unexpired period.

Under the DTC, there is no provision to extend the tax benefits available to STP Units and EOUs, which may be displeased especially IT and ITES sector.

Introduction of certain special provisions relating to avoidance of tax viz. GAAR, CFC Regulations etc. are welcome to curb invalid tax planning but subject to that they have been implemented in the right spirit in which they have been introduced and applied judicially.

To address controversy about taxability in cases like Vodafone, the DTC proposes to tax transfer of shares of a foreign company, on the basis that there is a transfer of a capital asset situated in India, if the fair value of the assets situated in India constitute at least 50% of the assets directly or indirectly held by the foreign company.

The introduction of advance pricing arrangement shall minimise litigation in transfer pricing disputes. Also, substantial reduction in penalty for procedural compliances under TP is welcome move.

Further, if a person is resident, the wealth tax provisions shall also apply and additional assets under the purview of Wealth tax as proposed under DTC include Bank deposits outside India, any interest in a foreign trust or any other body located outside India (whether incorporated or not) as well as any equity or preference shares held by a resident in a CFC. These assets will be liable to annual wealth tax @ 1% subject to basic exemption limit of Rs.1,00,00,000.

The overall impact of the DTC needs to be analysed on case to case basis based on the fine print of DTC.

As per the DTC provisions, a citizen of India or person of Indian origin being outside India and visiting India will be treated as resident if his stay in India is 60 days or more during the relevant financial year against 182 days presently and his stay in India during the immediately preceding 4 financial years exceeds 365 days. This is major set backs for NRIs regularly visiting India.

Tax Rates

Individuals and HUFs

The Direct Taxes Code Bill, 2010		The Income Tax Act, 1961	
Income slabs (Rs.)	Tax Rate	Income slabs (Rs.)	Tax Rate*
0- 2,00,000^	Nil	0 - 1,60,000#	Nil
2,00,001 – 5,00,000	10% of income exceeding Rs. 2,00,000	1,60,001 – 5,00,000	10.30% of income exceeding Rs. 1,60,000
5,00,001 – 10,00,000	30,000 plus 20% of income exceeding Rs. 10,00,000	5,00,001 – 8,00,000	Rs. 35,020 plus 20.60% of income exceeding Rs. 5,00,000
10,00,001 and above	1,30,000 plus 30% of income exceeding Rs. 10,00,000	8,00,001 and above	Rs. 96,820 plus 30.90% of income exceeding Rs. 8,00,000
^ in case of a resident individual of the age of 65 years or more (senior citizen) at any time during the FY, the basic exemption income slab is Rs. 2,50,000. The tax for other slabs will change accordingly.		* the tax rates are inclusive of education cess. # in case of a resident woman below 65 years of age at any time during the FY, the basic exemption slab is Rs. 1,90,000 and in case of a resident individual of the age of 65 years or more (senior citizen) at any time during the FY, the basic exemption income slab is Rs. 2,40,000. The tax for other slabs will change accordingly.	

Domestic Companies

The Direct Taxes Code Bill, 2010		The Income Tax Act, 1961		
Effective Tax Rate	Effective MAT Rates	Particulars	Effective Tax Rates	Effective MAT Rates
30%	20%	Having total income exceeding Rs. 1,00,00,000	33.22%	19.93%
		Having total income up to Rs. 1,00,00,000	30.90%	18.54%

Foreign Companies

The Direct Taxes Code Bill, 2010		The Income Tax Act, 1961	
Effective Tax Rate	Particulars	Effective Tax Rates	
30%	Having total income exceeding Rs. 1,00,00,000	42.23%	
	Having total income up to Rs. 1,00,00,000	41.20%	
Branch Profits Tax			
15% in addition to the corporate tax rate		NIL	

Dividend Distribution Tax / Tax on Distributed Income

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
DDT	15%	16.60875%
Income Distribution By Equity Oriented Mutual Fund	5%	0%
Income Distribution By Life Insurer to the policy holders of an approved equity oriented life insurance scheme.	5%	0%

Partnership Firms

The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
30%	30.90%

Association of Persons (APOs) and Body of Individuals (BOIs)

The Direct Taxes Code Bill 2010	The Income Tax Act, 1961
30%	As per slab rates provided in the case of individuals and HUFs

Wealth Tax

The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
1% on the value of specified assets in excess of Rs. 1,00,00,000	1% on the value of specified assets in excess of Rs. 30,00,000

Scope of Total Income - Basis of Charge

Heads of Income

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Heads of income	Clauses 12 – 15 For the purposes of computation of total income of any person for any FY, income from all sources shall be classified as follows: A - Income from ordinary sources. B - Income from special sources. The classification of Income from ordinary sources is under the same 5 head of Income as prescribed under the IT Act. Income from a special source includes – in case of non-residents, income in the nature of interest, royalty, FTS, income attributable to PE of non-resident in India etc. In case of residents, income from lottery, horse racing, card game etc.	Section 14 For the purpose of computation, all income shall be classified under the following heads of income: A - Salaries B - Income from house property C - Profits and gains of business or profession D - Capital gains E - Income from other sources

Income Deemed to Accrue in India

Particulars	The Direct Taxes Code Bill , 2010	The Income Tax Act, 1961
Income deemed to accrue or arise in India	Clause 5 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 if the fair market value of the assets in India owned, directly or indirectly, by such foreign company represent at least 50% of the fair market value of all assets owned by such foreign company. Such income shall be calculated in accordance with the specified formula Clause 5(2)(k) Income deemed to accrue in India shall include transportation charges accrued from or payable by any non-resident, if the transportation charges are in respect of the carriage to, or from, a place in India	Section 9 Income shall be deemed to accrue in India, if it accrues, whether directly or indirectly, through or from the transfer, of a capital asset situated in India.
Business connection	While deeming provision with respect to business connection is proposed to be continued, the term "business connection" is defined to include a PE. The definition of PE in DTC is in lines with PE defined in tax treaties concluded by India and includes one day Service PE, Equipment PE and Agency PE	Income shall be deemed to accrue in India, if it accrues, whether directly or indirectly, through or from any business connection in India. The term 'business connection" has not been defined in the IT Act
Specific deeming provision	Income (other than income from employment and any dividend paid by an Indian company outside India) shall be deemed to accrue in India, whether or not } the payment is made in India; } the services are rendered in India; } the non-resident has a residence or place of business or any business connection in India; or } the income has accrued in India	Income in the nature of interest, royalties and FTS shall be deemed to accrue in India, whether or not } the services are rendered in India or } the non-resident has a residence or place of business or any business connection in India;

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Definition of Royalty	Definition of royalty has been expanded to include the following: } the use or right to use of transmission by satellite, cable, optic fiber or similar technology. } the transfer of all or any rights (including the granting of a licence) in respect of live coverage of any event. } instead of “secret formula or process” use of “secret formula, process” thereby widening the scope. Royalty not to include transfer of any rights (including the granting of a license) in respect of computer software supplied by the non-resident manufacturer, along with a computer or computer-based equipment.	Section 9(1)(vi) provides for the definition of Royalties
Definition of FTS	DTC proposes to enlarge definition of FTS by including therein any consideration for development and transfer of a design, drawing, plan or software, or such other services.	Section 9(1)(vii) provides for the definition of FTS



Residential Status

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Residential Status of individual	Clause 4, Sixth Schedule A citizen of India or person of Indian origin living outside India and visiting India will be treated as resident if he stays in India for more than 59 days against 181 days in the IT Act during the relevant financial year and his stay in India during the immediately preceding 4 financial years exceeds 365 days. The concept of "resident but not ordinary resident" (RNOR) for individuals and HUFs is replaced by providing specific exemption from the total income of an individual with respect to the income sourced outside India and not derived from a business controlled or a profession set up in India on the same lines as currently applicable to RNOR	Section 6 Divided into three categories viz. Resident, Non-Resident and Resident but not Ordinarily Resident
Residential Status of a company	Company shall be resident in India if its place of effective management, at any time in the year, is situated 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 With the removal of word 'wholly', the company may be treated as resident in India even if the effective management of the company is partly situated in India.	Company shall be resident in India if the control and management of its affairs is situated wholly in India
Residential Status of any other person	Every other person shall be resident in India in any FY, if the place of control and management of its affairs at any time in the year is situated wholly or partly in India.	Every other person shall be resident in India in any FY, unless the place of control and management of its affairs during the year is situated wholly outside India



Income From Employment

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Computation	Clause 21 The income computed under the head "Income from employment" shall be the gross salary as reduced by the aggregate amount of the deductions referred to in Clause 23.	No specific provision as regards to manner of computation of income from employment.
Deductions / exemptions	No LTA benefit proposed.	LTA benefit available.
Medical reimbursement	Clause 314(191) Medical reimbursement up to Rs. 50,000 not to be treated as perquisites.	Proviso (v) to section 17(2) Medical reimbursement up to Rs. 15,000 not to be treated as perquisites.

Income From House Property

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Income from House Property	Clause 26 and 28 Gross rent shall be the amount of rent received or receivable, directly or indirectly, for the FY or part of the FY for which property is let out. The amount of rent received in advance to be included in the gross rent of the FY to which it relates	Section 23 Annual value to be determined on basis of fair rent, municipal valuation and standard rent
Standard deduction	Clause 27 Standard deduction on account of repairs and maintenance @ 20% of Gross rent	Section 24 Standard deduction on account of repairs and maintenance @ 30% of annual value
Special provision	Clause 24(5) Property used as hospital, hotel, convention centre or cold storage and forming part of SEZ, income from which is computed under the head 'income from business' not to be included under income from house property	No specific provisions regarding taxability of property used as hospital, hotel, convention centre and forming part of SEZ
Property owned by co-owners	Clause 24(iv) If shares of owners of property are not definite and ascertainable, such persons to be assessed as an association of persons in respect of such property	No specific provisions for property owned by co-owners where shares are not definite and ascertainable
Deduction of interest	Clauses 74 Interest on housing loan on self occupied property available up to Rs. 150,000 as a deduction from gross total income. Further, interest relating to period prior to FY in which the property has been acquired or constructed deductible in 5 equal installments	Section 24 Interest on housing loan on self occupied property available up to Rs. 150,000 as a deduction from "income from house property". Interest relating to pre-construction period deductible in 5 equal installments

Income From Business

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
General	Clause 30(2) Income from distinct and separate business (if there is no interlacing or interdependence between the business) is to be computed separately.	No specific provision for Income of distinct and separate businesses
Income computed under the head "income from business"	Clause 32(1), 32(3) and 33 Apart from retaining specified income in section 28 of the IT Act, the ambit of business income is widened to cover the following: } any consideration accrued or received on transfer of carbon credits. } the amount of profit on transfer, demolition, destroy or discardment of any business capital asset (other than a business capital asset used for scientific research and development) computed in accordance with the provisions of Clause 42. } the amount of remission or cessation of any liability by way of loan, deposit, advance or credit. } the amount withdrawn from any special reserve created and maintained under any provision of DTC or the IT Act as its stood before the commencement of DTC for which deduction has been allowed, if the amount is not utilised for the purpose and within the period specified therein. } any consideration accrued or received in respect of transfer of any capital asset self-generated in the course of the business. } any amount accrued or received on account of the cessation, termination or forfeiture in respect of agreement entered in the course of the business. } cash payment in respect of expenses exceeding Rs. 20,000 in a day (Rs. 35,000 in case of payments made to transporter) and allowed as a deduction. } any amount accrued or received, whether as an advance, security deposit or otherwise, from the long term leasing, or transfer of: – whole or part of any business asset; or – any interest in a business asset.	Section 28 Specified income shall be chargeable to income tax under the head "Profits and gains of business or profession".
Business Expenditure	Clause 34 The amount of business expenditure referred to in Clause 32(3) shall be the aggregate of the following: } the operating expenditure referred to in Clause 35, incurred by the person for the purposes of the business carried on during the FY; } finance charges referred to in Clause 36, incurred by the person for the purposes of the business carried on during the FY; } capital allowances referred to in section 37, in respect of the business carried on by the person during the FY.	No specific classification of provisions for manner of computation of total business expenditure.
Deduction for in-house scientific R & D	Clause 41 Company shall be allowed a deduction equal to 200% of the expenditure (not being expenditure in the nature of cost of any land or building) incurred on creating and maintaining an in-house facility for scientific R & D and carrying out scientific R & D in the in-house facility subject to prescribed conditions	Section 35(2AB) Deduction of 150% is allowed to a company engaged in the specified business in respect of expenditure (excepting on land and building) on in-house scientific R & D facility subject to certain conditions.

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Depreciation	Clause 37 The amount of capital allowances shall be the aggregate of the amount in respect of: } depreciation of business capital assets; } initial depreciation of business capital assets; } terminal allowance; } scientific research and development allowance; } deferred revenue expenditure allowance; } deduction of an amount in accordance with such deposit scheme in respect of the person carrying on business of growing and manufacturing tea or coffee or rubber in India, as may be prescribed. Besides retaining basic conditions for claiming depreciation as stipulated in the IT Act, the Code proposes include following aspects: } A business capital asset shall be deemed to be owned by the person if he is a lessee in terms of a financial lease. } The amount of deferred revenue expenditure allowance shall be such amount as computed in accordance with the Twenty-second Schedule. } Allowance of depreciation (as per prescribed formula) even if all the assets in the block of asset are demolished, destroyed, discarded or transferred. } Initial depreciation shall not be allowed if: – The asset is in nature of any office appliance; – The asset is installed in any residential accommodation including a guest house or any office premises. } Key changes in Depreciation rates are annexed vide Annexure A. } Treatment of Deferred Revenue are annexed vide Annexure B.	Section 32 Depreciation on asset shall be allowed as per specified rates subject to following broad conditions: } Assets must be owned by the assessee. } Asset must be used for the purpose of business. } Asset should be used during the relevant FY.



Dividend Distribution Tax

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Credit of DDT	Clause 109 DDT can be claimed as a set-off across by a holding company which may not be the ultimate holding company.	Section 115-O (1A) Dividend received from subsidiary company can be claimed as a set-off only by the ultimate holding company.
Applicability of DDT to SEZ Developers	Clause 109 SEZ developers are brought within the purview of DDT and are now liable to pay DDT @ 15% upon distribution of dividends.	Section 115-O (6) SEZ developers are not liable for DDT on distribution of Dividends.



Capital Gains

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Charging provision	Clause 46 The income from the transfer of any investment asset shall be computed under the head "Capital gains". Definition of 'capital assets' has been replaced with the term 'Investment Asset' as follows: } any capital asset which is not a business capital asset; } any security held by FII; } any undertaking or division of a business. Inclusion of security held by FII in the definition of investment asset seeks to tax income of FII under the head "Capital Gains".	Section 45 Any profits or gains arising from the transfer of capital asset shall be chargeable to tax under the head "capital gains"
Exemption from capital gains tax on transfer of equity shares or equity-oriented mutual funds subject to STT	Clause 51(2)(a) On transfer of equity shares or equity-oriented mutual funds which have been held for more than one year and where STT has been paid on the transfer, a deduction equal to 100% of the capital gains.	Section 10(38) Exemption from LTCG on transfer of shares or securities or mutual funds which is subject to STT.
Taxability on transfer of equity shares or equity-oriented mutual funds subject to STT	Clause 51(2)(b) Deduction equal to 50% of the capital gains would be allowed on transfer of equity shares or equity-oriented mutual funds which have been held for less than one year and where STT has been paid on the transfer. As such, the effective tax rate would be 5%, 10% or 15% for individuals, HUFs depending on the slab rates and for companies, the rate would be 15%.	Section 111A STCG on transfer of equity shares and equity oriented mutual funds and subject to STT are taxable @ 15% (plus applicable surcharge and education cess).
Holding period	Clause 51(3) Benefit of Indexation is available if specified asset (other than equity shares or equity-oriented mutual funds subject to STT and assets transferred under slump sale) held for more than 1 year from the end of the FY in which asset (other than mentioned above) was acquired.	Section 48 Benefit of Indexation / exemption is available if specified asset (other than shares, securities and mutual funds) held for more than 36 months from the date of acquisition.
Indexation	Clause 52 Date of substitution of Fair market value and the indexation base date is proposed to be 1 April 2000. Thus, all unrealized capital gains on assets between 1 April 1981 and 31 March 2000 not to be liable to tax.	Section 48 The base date for determining the cost of acquisition is 1 April 1981.
Cost of acquisition	Clause 53(7) The cost of acquisition of an asset shall be taken as nil if such cost cannot be determined for any reason. Cost of acquisition in respect of various modes of acquisition of shares has been provided in the Seventeenth Schedule.	Section 49 No specific provision to cover a situation where cost cannot be ascertained for any reason.
Capital gains tax rate for other investment assets	No distinction between LTCG and STCG. Further, no special tax rates are provided for capitals gains. Capital gains shall be taxed at normal income tax rates subject to benefit of indexation.	Distinction between LTCG and STCG for all capital assets. LTCG to be taxed @ 20% (plus applicable surcharge and education cess) whereas STCG to be charged at normal income tax rates.

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Roll over benefits	Clause 55(6) Exemption from Capital gains on transfer of any investment asset if residential house is acquired; provided not more than 1 residential house is owned on the date of transfer of such investment asset. The roll over provisions restricted to limit reinvestment in residential property on transfer of any investment asset except agricultural land. The capital gains exemption shall stand withdrawn if, apart from other conditions, the residential house so purchased is transferred within a period of 1 year from the end of FY in which new asset is acquired or constructed. Exemption under section 54 EC available under the IT Act not continued	Section 54 Exemption under section 54 or 54F would be withdrawn if the new asset is transferred within 3 years from the date of acquisition or construction.



Income From Residuary Sources

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Shares of closely-held company received by a firm or Company	Clause 58(2)(j) The purview of the taxability on the receipt of the shares of closely-held company for inadequate consideration or without consideration has been extended to every company and firms and not only to Closely held Company and firms.	Section 56(2)(viiia) Closely held Company or firm are covered under the purview of taxability on receipt of shares of closely-held company without consideration or for inadequate consideration.



Taxation of Non-Residents

Presumptive Taxation of Certain Businesses

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Services or facilities for prospecting, or extraction or production of, mineral oil or natural gas	Clause 32(2) read with Fourteenth Schedule 14% of the gross receipts	Section 44BB 10% of the gross receipts
Supplying plant and machinery on hire used for the above business	Clause 32(2) read with Fourteenth Schedule 14% of the gross receipts	Section 44BB 10% of the gross receipts
Operation of ships	Clause 32(2) read with Fourteenth Schedule 10% of the gross receipts	Section 44B 7.5% of the gross receipts
Operation of aircraft	Clause 32(2) read with Fourteenth Schedule 7% of the gross receipts	Section 44BBA 5% of the gross receipts

Note:

This may not result in significant increase in the effective tax rates due to lowering of tax rate in case of foreign companies from the present 40% to 30%.

Branch Profit Tax

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Branch Profits Tax ('BPT')	Clause 111 } Applicable to Foreign Companies in addition to normal corporate tax in respect of the Branch profits @ 15%. } Branch Profits shall be the income attributable, directly or indirectly, to the permanent establishment or an immovable property situated in India and included in the total income of the foreign company for the financial year, as reduced by the amount of income-tax payable on such attributable income. } BPT shall be treated equivalent to income tax and shall be discharged by payment of pre-paid taxes. } BPT provisions shall override all other provisions including provisions of DTAA.	No such provisions are in existence.



Other Aspects

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Tax Residency Certificate ('TRC')	Clause 291 The DTC provides that a person shall not be entitled to claim relief under the provisions of any agreement with foreign countries or specified territory unless he obtains a TRC of that other country or specified territory in the prescribed form.	Section 90 There is no specific provision under the IT Act to obtain TRC to claim beneficial provisions of the agreement with foreign countries or specified territory.
Agreement with foreign countries or specified territories and Overriding provisions	Clause 291 } DTC provides that an assessee may avail of the provisions of the agreement entered into by the Central Government or a specified association in India with the Government of any country or a specified territory outside India or the DTC, which ever is more beneficial to him. } However, the DTC contains an overriding provision according to which the provisions of DTC shall prevail in cases relating to GAAR, levy of BPT or CFC rules, whether or not such provisions are beneficial to the assessee.	Section 90 and Section 90A The IT Act provides that an assessee may avail of the provisions of the agreement entered into by the Central Government or a specified association in India with the Government of any country or a specified territory outside India or the Income Tax Act, which ever is more beneficial to him.



Provisions Relating To Avoidance Of Tax

General Anti-Avoidance Rule (GAAR)

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
GAAR	Clause 123 } GAAR provides for declaration of the arrangement by Commissioner as 'impermissible avoidance arrangement' if the same has been entered into by the taxpayer with the objective of deriving tax benefits. } Impermissible Avoidance Arrangement means an arrangement whose main purpose is to obtain a tax benefit and it – creates rights and obligations not normally created by tax payers dealing at arm's length; – results in the misuse or abuse of the DTC; – lacks commercial substance; – is entered into or carried out in a manner, which would not normally be applied for bona fide business purposes. } The tax consequences of such arrangement would be determined by the Commissioner by disregarding, combining or re-characterising any step in the arrangement. } The arrangement entered into by the taxpayer would be presumed to have been entered for the main purpose of obtaining tax benefit unless otherwise proved by the taxpayer. } GAAR provisions to be applied in the alternative for, or in addition to, any other basis for determination of tax liability. It implies that GAAR provisions shall override all other provisions including provisions of DTAA. } GAAR provisions shall apply in accordance with prescribed guidelines which are yet to be prescribed.	No specific provisions in IT Act.



Controlled Foreign Company (CFC) Regulations

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
CFC	Clause 58 read with 20th Schedule The total income of a Resident taxpayer has to include income attributable to a CFC which means a foreign company: } that is a resident of a territory with lower rate of taxation (i.e. where taxes paid are less than 50% of taxes on such profits as computed under the DTC); } whose shares are not listed on any stock exchange recognised by such Territory of which it is a resident for the purposes of tax; } individually or collectively controlled by persons resident in India (through capital, voting power, income, assets, dominant influence, decisive influence, etc.); } that is not engaged in active trade or business (i.e. it is not engaged in commercial, industrial, financial undertakings through employees/ personnel or less than 50% of its income is of the nature of dividend, interest, income from house property, capital gains, royalty, sale of goods/services to associated enterprises, income from management, holding or investment in securities/shareholdings, any other income under the head income from residuary sources, etc.); } has specified income exceeding Rs. 25,00,000. The income attributable will be based on the net profit as per the profit and loss account of CFC for the accounting period as per IFRS, GAAP or Accounting Standards notified under the Companies Act, 1956. The said net profit will be increased by any provision for unascertained liabilities or diminution in the value of assets, reduced by interim dividend paid and prior year losses before the application of specified attribution formula The resident taxpayer will have to furnish details of investments and interest in entities outside India in the prescribed form and manner. The amount received from a CFC as dividend in a subsequent year will be reduced from the total income to the extent it has been taxed as CFC income in any preceding previous year. CFC provisions shall be applicable to taxpayers and shall override the beneficial provisions of the DTAA.	No specific provisions in IT Act.



Transfer Pricing Regulations

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Introduction of APA	Clause 118 The DTC introduced APA in order to eliminate the uncertainty over determination of arm's length price. } The APA provides for determination of arm's length price of an international transaction entered into by a person through an advance pricing agreement by the CBDT with the taxpayer, with the approval of the Central Government. } The APA shall be valid for a period as specified in the agreement, which shall not exceed 5 consecutive financial years. } The APA shall be binding only on the taxpayer, the Commissioner and the income-tax authorities subordinate to him only in respect of the transaction in relation to which, the APA has been entered into. } However, the APA shall not be binding if there is any amendment to the Code which has a bearing on it. } CBDT may declare an APA to be void <i>ab initio</i> if it has been obtained by the taxpayer by fraud or through misrepresentation of facts.	No such provision exists in the IT Act.
Determination of Arm's Length Price	Clause 153 and Clause 155 The following major highlight in the change in this provision: } The TPO may determine the ALP in relation to the best of his judgment, if the assessee does not co-operate or comply with his directions. } It provides that AO shall make the assessment of the tax base of the assessee after taking into account the order of the TPO.	Section 92CA Reference to the TPO and passing of order of ALP by TPO } No provisions as regards best judgment assessment in existing IT Act. } It is provided that AO shall proceed to compute the total income of the assessee in conformity with the ALP determined by the TPO.



Tax Incentives / Deductions

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Business profits of SEZ unit and SEZ developer	Schedule 32(2) Grandfathering of profit linked incentives under the IT Act 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.	Section 10AA Section 10(AA) of the IT Act allows any SEZ unit which begins operations on or after April 1 2006 to make tax deductions equivalent to 100% of its income generated for a period of 5 consecutive assessment years from the time the SEZ unit commences operations, 50% for the next five assessment years, and tax deductions not exceeding 50% of the ploughed-back profits for the following five assessment years. Section 80-IAB A deduction of 100% of profits derived from the business of developing SEZ would be available to developer of SEZ for any 10 consecutive years out of 15 years beginning from the year in which SEZ has been notified.
Computation of profits of specified business	Schedule 32(2) For following businesses, investment linked incentives will apply instead of profit linked incentives as contained in Thirteenth Schedule: } generation, transmission or distribution of power; } developing, or operating and maintaining, any infrastructure facility; } operating and maintaining a hospital in any area, other than the excluded area; } processing, preservation and packaging of fruits and vegetables; } laying and operating a cross country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of the network; } setting up and operating a cold chain facility; } setting up and operating a warehousing facility for storage of agricultural produce; } building and operating, anywhere in India, a new hotel of two star or above category as classified by the Central Government and commences operation on or after the 1 April 2010; } building and operating, anywhere in India, a new hospital with at least 100 beds for patients and commences operation on or after the 1 April 2010; } developing and building a housing project under a scheme for slum re-development or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed and commences operation on or after the 1 April 2010.	Section 80-IA and 80-IB Section 80-IA and 80-IB provide for deduction in respect of income from specified business such as infrastructure facility, power generation, hotels, maintaining hospitals in rural area, housing projects etc. linked to profitability.
Deduction for savings and Deduction for Life Insurance, health insurance premium, tuition fees etc.	Clause 69,70,71,72,74 Deduction for contribution to approved funds to the extent of Rs 100,000. In addition, payment of life insurance premium, health insurance premium, tuition fees qualify for deduction to the extent of Rs. 50,000 in aggregate.	Section 80C, 80CCF, 80D Deduction for specified investments upto a total limit of Rs. 100,000 in aggregate and additional Rs. 20,000 for investment in infrastructure bonds. Deduction for Medical insurance premium is available upto Rs. 15,000 (Rs.20,000 for senior citizens)

Minimum Alternate Tax

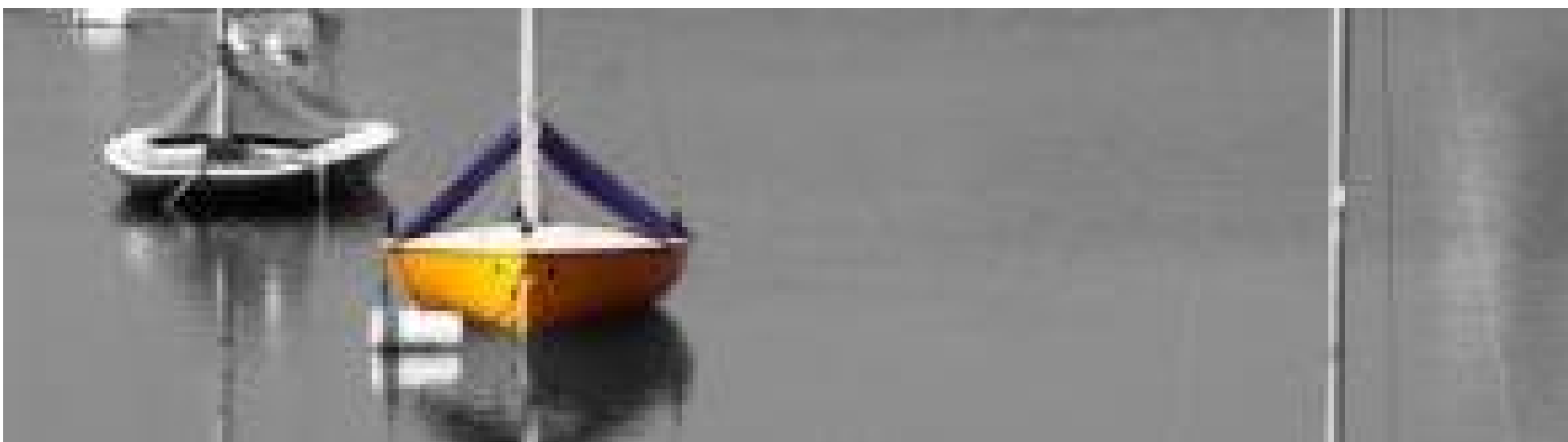
Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Carry forward of credit of MAT	Clause 104-107 15 Years	Section 115JAA 10 Years
Applicability to SEZ units	Clause 104-107 SEZ Units and SEZ developer to pay tax on book profits.	Section 115JB (6) MAT provisions are not applicable to profits of an entrepreneur in SEZ or Developer of SEZ.



Other Key Provisions

Non-Profit Organisation

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Computation of total income	Clause 90 - 103 Total income of NPOs to be computed as gross receipts less outgoings 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 upto 3 years, to the extent of 15% of the total income (before accumulation) or 10% of gross receipts, whichever is higher, and invested in the specified modes of investment	Section 11 - 13 The amount of taxable income would be arrived at after deduction of amount spent on permitted activities after setting aside flat 15% of Gross Receipts.
Tax Rate	Clause 90 - 103 Total income of NPOs (post accumulation), in excess of Rs. 1,00,000, is liable to tax @ 15%.	Section 11 - 13 The tax liability is dependent upon the structure of the NPO i.e. Company, AOP etc. The maximum marginal tax rate is 33.62% in case of Company or AOP in which company is a member or else the maximum marginal tax rate is 30.90% in other case.
Taxability of unspent amount	Clause 90 - 103 Any sum received by an NPO in the last month of a financial year would not be taxable if it is deposited in a specified account and spent by the end of the next financial year.	Section 11 - 13 The Charitable trust or institution may accumulate or set apart either the whole or part of its income for future application for charitable or religious purposes in India subject to declaration to the tax authorities and fulfilment of certain conditions.



Compliance And Procedural Aspects

Accounts and Audit

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Tax Audit Threshold	Section 88 The threshold limits for tax audit revised as under: } gross receipts exceeding Rs. 25,00,000 for person carrying on profession } total turnover or gross receipts exceeding Rs. 1,00,00,000 for person carrying on business.	Section 44AB At present, the threshold limits for tax audit is as under: } gross receipts exceeding Rs. 15,00,000 for person carrying on profession } total turnover or gross receipts exceeding Rs. 60,00,000 for person carrying on business.

Appeals and Revision

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
CIT (A) for non-disposal of rectification application	Clause 179 It provides that the assessee may prefer an appeal with the CIT(A), on non-disposal of rectification application within 6 months from the date of filing of application.	Clause 154 There is no provision for preferring appeals if the application is not disposed within 6 months from the date of filing of application.
Extension of the powers of the CIT(A)	Clause 181 The DTC provides for extending the power of the CIT(A) while dispensing an appeal, to consider and decide on any matter which was not considered by the AO.	Section 251 No such provision exists
Revision of orders prejudicial to revenue	Clause 191 } DTC retains the provisions for revision of orders by the income-tax authorities prejudicial to revenue, however it provides instances wherein the orders prejudicial to revenue can be revised. } Further it provides that the revision order passed by the CIT(A) shall not be an order cancelling the assessment and directing a fresh assessment.	Section 263 } Section 263 of the IT Act provides for revision of orders prejudicial to revenue. } It further provides that the CIT(A) may pass an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment.

Pre-paid Taxes / TCS

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
TDS on Income / payment made to FII	Clause 200 Deduction shall not be made on any payment made to FII as consideration for sale of securities listed on a recognised stock exchange.	Section 196D No deduction of tax shall be made from any income, by way of capital gains arising from the transfer of securities referred to in section 115AD, payable to FII.
Rationalization of the provision for collection of Tax at Source	Clause 202 DTC provides to rationalize the rate @ 3% for collection of tax on various items.	Section 206C The existing provision provides for collection of tax as for various items such as alcoholic liquor for human consumption, scrap, tendu leaves, timber, Parking Lot, Toll plaza and Mining and quarrying ranging from 1% to 5%

Procedural Aspects

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Power of Survey	Clause 141(1) The power to survey can be exercised only when the prescribed tax authorities have reason to suspect that the person has not complied with the provisions of this code. Clause 141(5) This clause provides that Income tax authorities may examine on oath any person if his statement would be useful for or relevant to any proceedings under this Act and the same may be used in evidence in any proceeding under this Act.	Section 133A(1) Reason to suspect is not pre-requisite for initiating the survey proceedings. Section 133A(3)(ia) While conducting the survey at business place of the assessee, Income tax authorities may record the statements of any person which may be useful for or relevant to any proceedings under this Act.
Return of income / Self reporting of tax base	Clause 144 Every Person is required to furnish the return of tax base as under: } Individual, HUF, artificial juridical person, if the gross total income from ordinary source exceeds the threshold limit. } All the other persons (i.e. company, an unincorporated body, NPO, co-operative society, society other than co-operative society, local authority, political party) irrespective whether the gross total income from ordinary source exceeds the threshold limit. } Any person who intends to carry forward losses or part of the same. } Any person who derives income from special sources chargeable to tax. } The company, mutual fund and life insurer distributing income to shareholders, unit-holders or policy holder respectively. The due date of furnishing return of tax base is revised as under: } 30 June following the financial year if a person is not a company and does not derive any income from business. } 31 August in case of all other assessee.	Section 139 Every person is required to submit its return of income within the due date as under: } a company or firm; or } any other person (other than firm / company however including charitable trust, political party, scientific research association, news agency, trade unions etc.) whose taxable income exceeds the maximum amount chargeable to tax. The return shall be filed for carry forward of losses under the head 'Profits and gains of business and profession' or 'Capital gain' of the said year. The existing provisions provides for the due date for furnishing the return of income as under: } 31 July following the financial year if a person is not a Company and person whose accounts are not required to be audited under this Act or any other law } 30 September in case of all other assessee.
DRP	Clause 158 The scope of eligible assessee is widened to include any person in whose case the variation arises as a consequence of the order of the Commissioner passed under section 154(3) i.e. determination of an impermissible avoidance agreement.	Section 144C The existing provisions provide for the filing of the objections with DRP by certain eligible assessee.

Particulars	The Direct Taxes Code Bill, 2010	The Income Tax Act, 1961
Re-opening of Assessment	Clause 159 The regulation pertaining to the Search and Seizure matters are incorporated in section 159 and Section 163. The scope of deemed escaped assessment is widened to include the cases where: } Computation or assessment has not been made in accordance with any order, direction, instruction or circular issued by the Board. } Computation or assessment has not been made in accordance with any order, direction, instruction or circular issued before making of the assessment, by any authority to whom the AO is subordinate } Objection raised by C&AG	Section 147 to 152, 153A to 153C AO may assess or reassess such income other than the income involving matters which are subject matter of any appeal, reference or revision.
Issue of Notice	No notice can be issued: } for the 7 financial years immediately preceding the financial year in which the search and seizure has been carried out or material has been obtained. } Within the period of 7 financial years in any other case.	No Notice can be issued as under: } <u>Search and Seizure</u>: For the 6 assessment years immediately preceding the assessment year relevant to previous year in which the search initiated or requisition is made. } <u>Reassessment</u>: For more than 6 years



Wealth Tax Provisions

Particulars	The Direct Taxes Code Bill, 2010	The Wealth Tax Act, 1957
Applicability of wealth tax	Clause 112-114 All assessee except NPO	} Individual, } Hindu Undivided Family and } Company
Assets Covered	The following additions are made to the list of assets other than the assets presently covered under Wealth tax Act, 1957: } Archaeological Collections, Drawings, Paintings, Sculptures or any other work of art. } Watch having value in excess of Rs. 50,000. } Interest in foreign trust or any other body located outside India (whether incorporated or not) other than a foreign company. } Equity or Preference Shares held by a resident in a CFC. } Cash in hand in excess of Rs. 2,00,000 in case of individual. } Bank deposits outside India, in case of individuals and HUFs, and in the case of other persons, any such deposit not recorded in the books of account	Presently, following assets are covered under the purview of wealth tax: } Guest House, Residential House or Commercial Property. } Motor Cars. } Jewellery, Bullion, utensils of Gold Silver etc. } Yachts, Boats and aircrafts. } Urban Land. } Cash in Hand in excess of Rs. 50,000 in case of individual.



Annexures

A: Key Changes in Depreciation Rates

Sr.	Assets	Depreciation Rate (%)	
		DTC-2010	IT ACT
1	Building		
	Buildings acquired on or after 1 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 as per of Section 80-IA(4)(i)	10	100
	Buildings used as or for hotels or boarding houses, railway station, airport, sea port or bus terminal, hospitals or convention centres	15	10
2	Scientific research assets (other than land)	100	-
3	Intangible assets		
	Asset or project constructed, erected or set up by the assessee if, benefit or advantage arises to the assessee over a fixed period not exceeding ten years; and asset is not owned by the assessee	20	-
	Asset or project constructed, erected or set up by the assessee if, benefit or advantage arises to the assessee over a fixed period exceeding 10 years; and asset is not owned by the assessee	15	-
4	Vehicles		
	Commercial vehicles for the purpose of business or profession - depending on the date of acquisition and put to use	15	40/50/60

Note:

In case of intangible assets, 100% depreciation would be available if WDV is Rs. 1,00,000 or less.



B: Deferred Revenue Expenditure Allowance

Sr.	Nature of deferred revenue expenditure	No. of FYs for which expenditure is allowable	
		DTC-2010	IT ACT
1	Non-compete Fees.	6	-
2	Premium on obtaining assets on lease/ rent.	6	-
3	VRS expenditure.	6	5
4	Expenditure incurred by an Indian company wholly and exclusively for the purposes of business reorganization.	6	5
5	Expenditure incurred by a person resident in India wholly and exclusively on any operations relating to prospecting for any mineral or the development of a mine or other natural deposit of any mineral, to the extent prescribed.	10	10
6	Any loss on account of forfeiture of any agreement entered in the course of the business.	6	-
7	Prescribed preliminary expenses incurred before the commencement of business or in connection with extension of business or in connection with the setting up of new business.	6	5



C: TDS Rates on Payment to Residents

Particulars	TDS rate as per DTC Bill 2010 {Rate (%)}	TDS rate as per Income Tax Act, 1961 {Rate (%)}
Income from employment	Average rate of income-tax on estimated income from employment	As per the applicable income slab rates
Payment to contractors	2 %	1% (2% for companies and firms)
Interest	10 %	10%
Dividend other than dividend in respect of which dividend distribution tax is paid	10 %	10% (On deemed dividend other than covered under section 115-O)
Income distributed by mutual fund on which income distribution tax is not paid } where the deductee is an Individual or a Hindu undivided family } any other deductee	10% 20%	NIL
Payment made by a life-insurer in respect of a life insurance policy other than the policy referred to in clause (d) or clause (e) of sub-section (3) of section 59 } where the deductee is an Individual or a Hindu undivided family } any other deductee	10% 20%	NIL
Commission, brokerage, remuneration, or prize (by whatever name called) for rendering any services	10%	10%
Fees for professional or technical services	10%	10%
Payment for royalty or non-compete fee	10%	10%
Payment of compensation on compulsory acquisition of immovable property other than agricultural land	10%	10%
Rent } for the use of machinery or plant or equipment } for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings	2% 10%	2% 10%

Notes:

- } The Code continues with the exemption from TDS on payment for carriage of goods by road transport if the payee furnishes his Permanent Account Number.
- } If the deductee is required to obtain PAN and does not furnish such number to the deductor, deduction of tax at source in such case shall be at the rate of 20% or at the rate specified, whichever is higher.

D: TDS Rates on Payment to Non-Residents

Particulars	TDS rate as per DTC 2010 {Rate (%)}	TDS rate as per Income Tax Act, 1961 {Rate (%) (including surcharge and education cess)}
Income from employment	Average rate of income-tax on estimated income from employment	As per the applicable income slab rates
Payment by way of: } interest; or } dividends on which dividend distribution tax has not been paid under section 109; or } profit distributed by a fund on which tax on distributed income has not been paid under section 110	20%	21.115%
Payment by way of royalty or fees for technical services	20%	10.5575%
Winnings from lotteries, crossword puzzles, card games or any other game or gambling or betting	30%	31.6725%
Winnings from horse races (not related to the activity of owning and maintaining race horses).	30%	31.6725%
Payment to a non-resident sportsperson (not being a citizen of India) by way of: } participation in India in any game or sport (other than winnings referred to at serial numbers 4 and 5); } advertisement; or } contribution of articles relating to any game or sport in newspapers, magazines or journals in India	10%	10.5575%
Payment by way of guarantee money to a non-resident sports association or institution in relation to any game or sports played in India	10%	10.5575%
Any other sum chargeable to tax: } Recipient is a non-resident and non-corporate assessee } Recipient is a non-domestic company	30%	30.90% 42.23%

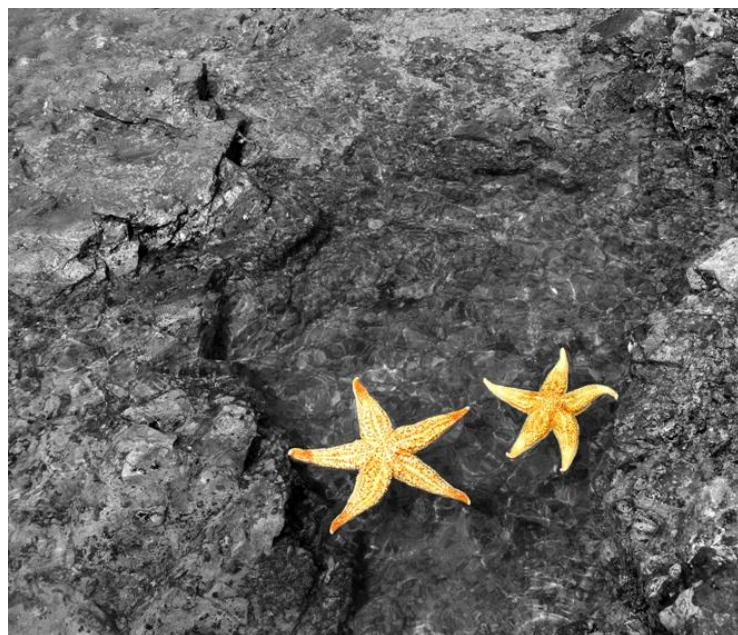
Notes:

- } The non-resident can avail the benefit of lower rate of tax on any item of income specified in the double tax treaty signed by India and the withholding tax rate shall be capped at such beneficial rate.
- } If the deductee is required to obtain PAN and does not furnish such number to the deductor, deduction of tax at source in such case shall be at the rate of 20% or at the rate specified, whichever is higher.

Abbreviations

AEs	Associated Enterprises
AO	Assessing Officer
ALP	Arm's Length Price
AOP	Association of Persons
APA	Advanced Pricing Agreement
BOI	Body of Individuals
C&AG	The Comptroller and Auditor General of India
CBDT	The Central Board of Direct Taxes
CFC	Controlled Foreign Company
CIT	The Commissioner of Income tax
CIT(A)	The Commissioner of Income tax (Appeals)
DDT	Dividend Distribution tax
DRP	Dispute Resolution Panel
DTAA	Double Tax Avoidance Agreement
DTC	The Direct Taxes Code Bill, 2010
FII	Foreign Institutional Investors
FTS	Fees for Technical Services
FTC	Foreign Tax Credit
GAAP	Generally Accepted Accounting Principles
GAAR	General Anti Avoidance Rules
IFRS	International Financial Reporting Standards
IT Act	The Income-tax Act, 1961
ITAT	Income Tax Appellate Tribunal

MAT	Minimum Alternate Tax
NPO	Non Profit Organization
PE	Permanent Establishment
R & D	Research and Development
SEZ	Special Economic Zones
STT	Securities Transaction Tax
TPO	Transfer Pricing Officer
WOS	Wholly Owned Subsidiary
TDS	Tax Deducted at Source
TCS	Tax Collected at Source



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August 2010