



Direct Tax Code and its Impact on Power Sector

“When archaic rules have to be replaced with new ones, the changes must be dramatic and path breaking.” – Union Finance Minister Pranab Mukherjee at the time of releasing the draft Direct Tax Code (Tax Code).

The **New Direct Tax Code (DTC)** is said to replace the existing **Income Tax Act of 1961** in India. It is expected to be passed in the monsoon session of 2010 and is expected to be enforced from 1st April, 2012. During the budget 2010 presentation, the finance minister Mr. Pranab Mukherjee reiterated his commitment to bringing into force the new direct tax code (DTC) into force from 1st of April, 2011, but same could not be fulfilled and now it will be applicable from Financial Year 2012 - 2013

Impact on Power Sector

Current Scenario:

As per the existing provisions of the Income Tax Act, 1961, an Undertaking set up in any part of India for the Generation or Generation and Distribution of power or Reconstruction or revival of a power generating unit if it begins to generate power at any time during the period beginning on 1st April, 1993 to 31st March, 2011 is eligible for Profit based deduction subject to fulfillment of other conditions stipulated under the provisions of the Income Tax Act, 1961.

Direct Tax Code (DTC) Proposals

DTC 2010 would replace the Income Tax Act, 1961 and, hence, it is provided that the businesses eligible for profit-linked incentives under the Income Tax Act, 1961 regime as of 31 March 2012, whose tax holiday period has not expired, shall continue to be eligible for profit-linked tax incentives for the unexpired period, subject to the following conditions:

- The method of computation of profits shall be as per DTC 2010, except that capital expenditure and pre-commencement business expenses will not be allowed as a deduction.
- The period of deduction shall not include a period for which deduction was not allowable under the Income Tax Act, 1961. However, question may arise as to whether the restriction will apply only during the period of tax holiday or on a perpetual basis. Question may also arise if the limitation on grant of capital allowances, including depreciation, will also extend to assets acquired prior to March 2012 and which have already become part of the block of assets.
- The taxpayer continues to satisfy the conditions as specified under Section 80IA of the Income Tax Act, 1961.

Effect on Undertaking set up on or after 1st April, 2012:

- An Undertaking set up in any part of India for the Generation or Transmission or Distribution of power and if it begins to generate power at any time on or after 1st April, 2012 will be eligible for investment-based incentives wherein capital expenditure and expenditure prior to commencement of Business shall be allowed as Business Expenditure except expenditure incurred on acquisition of any Land including Long Term Lease, Goodwill or Financial Instrument.

Moreover, the Direct Tax Code has also allowed Power Companies to offset Losses against the Profits of other infrastructure projects or corporate income in the current year as well as future years which is a welcome measure.

The Direct Tax Code, 2010 has curtailed the some of the provisions of Income Tax Act, 1961 even though it is positive step for the Power Sector and beneficial to Existing as well as New Power Undertakings.