



Direct Taxes Code Bill, 2009

NPOs, Unincorporated Bodies, Financial Intermediaries, Rates of Taxes & TDS

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Rates of Taxes

- Substantial increase in income tax slabs for individuals
- No surcharge or Education Cess

Rate of Taxes	Existing Slabs (Rs.)	Revised Slabs (Rs.)
Nil	0 -1,60,000*	0 - 1,60,000*
10%	1,60,010 – 3,00,000	1,60,100 – 10,00,000
20%	3,00,010 – 5,00,000	10,00,100 – 25,00,000
30%	5,00,010 & above	25,00,100 & above

* Rs.1,90,000 in case of woman resident in India & Rs.2,40,000 for resident above the age of 65



Rates of Taxes

- Partnership Firms & other unincorporated bodies – Income Tax at flat rate of 30%
- No change in tax rates of co-operative societies
- Companies tax rate reduced to 25% from 30% - No surcharge or Education Cess
- Capital Gains chargeable to tax at higher rates
 - Residents at normal rates – Individual at slab rates, unincorporated bodies at 30%, Companies at 25%, NPOs at 15%
 - Non-residents at 30%
- Tax rates for non-residents (including foreign companies)– Special Sources at flat rates
 - Interest (whether in foreign currency or rupees) 20%
 - Dividends not subject to Dividend Distribution Tax 20%
 - Capital Gains 30%
 - Other investment income 20%
 - Royalties & Fees for Technical Services 20%



Rates of Taxes

- Foreign companies tax rate reduced to 25%
- Foreign Companies also liable to Branch Profits Tax of 15% on income as reduced by income tax – effectively total tax of 36.25%
- MAT rate 0.25% of gross assets for Banks, 2% of gross assets for others
- Dividend Distribution Tax Rate unchanged at 15% -
 - Payable only by companies and not by Mutual Funds
 - Exemption for SEZ Developers/Units no longer available
 - Set off for subsidiary dividend received continues
 - No Dividend Distribution Tax on dividend paid to pass-thru entity
- Wealth Tax rates substantially reduced – 0.25% on wealth exceeding Rs.50 crore in case of individual, HUF & Private Discretionary Trust



Tax Deduction at Source

General

- Third Schedule deals with types of payments & rates for payments to residents, Fourth Schedule deals with payments to Non-residents
- If PAN not furnished, schedule rate or 20%, whichever is higher
- Point of time of deduction – on settlement of amount payable in cash, by issue of cheque/draft, by credit to any account (suspense or other) or by any other prescribed mode
- No exemption for payments for personal purposes of the payer – Payments to Doctors, Payments to Contractors, etc.
- No exemption for payments to Government
- No provision for exemption on self declaration – Form 15G, 15H, etc. – difficulty for Senior Citizens
- Deductee can make application to AO for certificate of no deduction – No provision for certificate of deduction at lower rate
- Deductor can make application to AO for certificate of no deduction from payments to Non-residents - No certificate of deduction at lower rate
- Time for payment, format of TDS certificate, periodicity and due dates of returns, format of returns etc. to be prescribed by CBDT



Tax Deduction at Source Salaries

- Required to be deducted by all persons
- At average rate of income tax
- TDS on salary also on settlement on credit, not only on payment – difficulty in respect of commission to directors based on profits
- No provision for declaration by employee of other salary received/salary received from previous employer during the year
- Whether possible to consider deductions for savings u/s.66 ?
- Salary to Non-resident employees - covered by Fourth Schedule



Tax Deduction at Source Interest

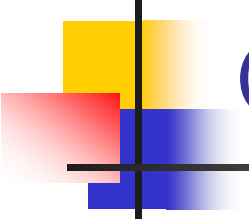
- No distinction between interest on securities and other interest
- Similar exemptions as currently available, except with minor modifications
- No TDS on 8% Savings (Taxable) Bonds, 2003 as exception to Government Security not provided
- Exemption for interest payable to banks (including Co-operative Banks), Financial Corporations, Insurance Companies, Mutual Funds and other notified Institutions, Associations, or Bodies
- No exemption for interest exceeding Rs.10,000 paid by a co-operative bank to its members on time deposits
- No exemption for interest payments by co-operative bank/society to co-operative society
- Fortunately exemption for interest on income tax refunds !



Tax Deduction at Source

Payments to Contractors

- No distinction between payments to individual/HUF and others – common rate of 1%
- TDS deductible on works contract, service contract, broadcasting & telecasting, supply of labour for works or service contract, advertising, carriage of goods and passengers by transport other than railways
- Service contract – includes contract for job work – no specific exemption for manufacture of goods by customer specification where material not supplied by customer
- Catering not specifically covered – whether service contract ?
- Service contract – broad scope
- Definition of service – clause 252 of S.284 – service of any description to potential users including in connection with business of any industrial or commercial nature, such as accounting, banking, merchant banking, communication, conveying of news or information, advertising, entertainment, amusement, education, financing, insurance, chit funds, real estate, construction, transport, storage, processing, supply of electrical or other energy, boarding and lodging



Tax Deduction at Source Commission or Brokerage

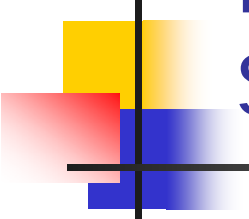
- Combined rate for insurance, sale of lottery tickets as well as other commission of 10%
- Brokerage or commission not defined
- To include remuneration or prize
- For rendering any services
- No exemption for brokerage in relation to securities transactions
- Exemption limit increased to aggregate of Rs.5,000



Tax Deduction at Source

Rent

- Limit of Rs.1,20,000 unchanged
- Rate reduced to 1% for use of machinery, plant or equipment
- Definition of rent under clause 235 of s.284 – in relation to house property, any income derived directly or indirectly from letting of the property
- No definition of rent for movable property



Tax Deduction at Source

Fees for Professional or Technical Services, Royalty, Non-compete Fees

- No exemption limit – tax deductible even on payment of Rs.100
- No definition of profession or professional services
- Fees for technical services defined under clause 105 of s.284
- Royalty defined under clause 240 of s.284 –
 - includes consideration for the use or right to use of transmission by satellite, cable, optic fiber or similar technology
 - Includes transfer of all or any rights (including grant of licence) in respect of live coverage of any event
 - Includes transfer of all or any rights in respect of cinematographic films
 - Ship and Aircraft hire (other than covered by table in Fourteenth Schedule) also covered



Tax Deduction at Source

Any other Income

- At 10%
- Whether would cover :
 - Capital gains ?
 - Purchase of goods ?
 - Donations ?
 - Incentives ?
 - Remuneration to partners by firm ?
 - Payment from Savings Schemes/Provident Fund ?
 - Exempt Incomes – payment of share of profit by firm to partners, compensation paid by Government on account of disasters ?
 - Payments to Government – Fees, etc. ?



Unincorporated Bodies

- Firm, AOP & BOI
- Firm includes LLP
- To be taxed at flat rate of 30%
- Partners/Members referred to as Participants
- Remuneration to working Participants allowable as deduction if in accordance with Agreement of the Association/(Partnership Deed) & relates to period following after date of Agreement
- No requirement of filing Agreement of Association/Partnership Deed
- Working participant – Individual actively engaged in conducting affairs of business or profession of unincorporated body
- Remuneration payable to any sleeping Participant not allowable
- Interest paid to Participants allowable to extent in accordance with agreement of association & relating to period after date of agreement
- No limits for allowability of interest & remuneration paid to Participants
- However deductibility subject to General Anti Avoidance Rules – S.104
 - No deduction for capital or revenue expenditure considered by AO to be excessive or unreasonable having regard to Fair Market Value of goods, services or facilities, legitimate needs of the business or benefit derived by or accruing to the person



Unincorporated Bodies

- Change in constitution – S.180
 - One assessment for entire financial year in case of change in constitution
 - Change in constitution if one or more participants cease to be participants, one or more new participants are admitted or all participants continue with change in shares
 - If change in constitution on account of death of a participant or retirement of all the participants, separate assessments to be made as if successor & predecessor
- Financial year – Clause 109 of S.284
 - in event of discontinuance of business/dissolution – till date of discontinuance/dissolution
 - In event of retirement or death of participant – till date of retirement/death
- Carry forward of losses of unincorporated body to be reduced by share of retired or deceased participant for financial year ending on date of retirement/death – S.62



Unincorporated Bodies

- Early assessment may be made where AO is of view that unincorporated body is likely to be dissolved in the financial year or shortly after its expiry – S.178
- Notice to be given by participant on dissolution of unincorporated body – S.267
- On dissolution of unincorporated body, participant or legal representative of deceased participant would be representative assessee – S.170
- Joint & Several liability of participants along with unincorporated body for any amounts payable under DTC – S.220
- Taxation of Participants
 - Interest or remuneration taxable as Income from Business – S.31(2)(viii)
 - Share of profit not taxable in hands of member – Clause 3 of Sixth Schedule



Pass-thru Entities (Financial Intermediaries)

- Pass-thru entities defined as meaning (Clause 194 of S.284) :
 - New Pension System Trust
 - Mutual Fund
 - Approved Provident Fund
 - Approved Superannuation Fund
 - Life Insurance Company
- Income of following entities exempt under Seventh Schedule :
 - New Pension System Trust
 - Mutual Fund
 - Approved Provident Fund
 - Approved Superannuation Fund
- Permitted Savings Intermediaries also defined as meaning :
 - Approved Provident Fund
 - Approved Superannuation Fund
 - Life Insurer
 - New Pension System Trust



Pass-thru Entities (Financial Intermediaries)

- Income of approved Gratuity Fund, Venture Capital Company & Venture Capital Fund also exempt
- Life Insurance Company profits to be taxed only in respect of Shareholders Account (Non Technical Account) and not in respect of Policyholders Account (Technical Account) – Amounts payable to Policyholders not taxable in hands of Life Insurance Company



Investors in Pass-thru Entities (Financial Intermediaries)

- Exemption for income received in respect of :
 - Units of Mutual Fund
 - Units from Administrator of specified undertaking
 - Units from specified company
- Exemption for payment from Provident Fund of accumulated balance as on 31.3.2011
- Deduction for sums paid to/ deposited up to Rs.3 lakh in account with permitted savings intermediary – not complete EET
- Following items taxable as Income from Residuary Sources
 - Sums received under Life Insurance Policy, including Bonus
 - Amounts received or withdrawn from account maintained with Permitted Savings Intermediaries, representing principal amount or interest, dividend, bonus, capital appreciation or any other form of return on the investment – rolling over amount from one account to another or purchasing annuity plan not amounting to receipt or withdrawal
- Deduction for sum received under Life Insurance Policy (including bonus) if premium for any of the years does not exceed 5% of capital sum assured & sum received only on completion of original contracted insurance period or on death of insured



Life Insurance Policies

- No Dividend Distribution Tax on dividends paid to Life Insurance Company – can company pass on benefit through higher dividends?
- Income exempt in hands of Life Insurance Company
- Premium deductible for investor up to Rs.3 lakh along with other permitted savings
- Entire amount received under Life Insurance Policy (including Bonus) taxable if :
 - Premium payable for any year exceeds 5% of capital sum assured
 - Policy terminated prematurely
- Otherwise amount received under Life Insurance Policy effectively not taxable
- Amounts received by nominee on death of insured not taxable
- Amounts received under Moneyback/Endowment Policies at Periodic Intervals – whether taxable?
- No exemption for policies taken prior to 1.4.2011 or bonus accrued till that date



Approved Provident Funds

- Dividend received by Provident Fund not subject to Dividend Distribution Tax
- Income exempt in hands of Provident Fund
- Contribution to Provident Fund up to Rs.3 lakh deductible for investor along with other permitted savings
- Amount withdrawn from Provident Fund taxable on withdrawal as Income from Residuary Sources unless :
 - Amount of withdrawal represents balance as on 31.3.2011
 - Amount rolled over into another account
- Split up of withdrawal on what basis ? FIFO ?
- Whether transfer from Provident Fund Account to Superannuation Fund Account or New Pension System Account taxable ?



Approved Superannuation Funds

- Dividend received by superannuation funds not subject to Dividend Distribution Tax
- Income of Superannuation Fund not taxable
- Contribution to Superannuation Fund up to Rs.3 lakh deductible for investor along with other permitted savings
- Amount withdrawn from superannuation fund taxable as Income from Residuary Sources unless :
 - Utilised to purchase Annuity Plan or
 - Rolled over into another account
- No exemption for accumulated balance as on 31.3.2011
- Annuity received taxable as Income from Residuary Sources



New Pension System

- Dividend received by New Pension System Trust not subject to Dividend Distribution Tax
- Income of New Pension System not taxable
- Contribution to New Pension System up to Rs.3 lakh deductible for investor along with other permitted savings
- Amount withdrawn from New Pension System taxable as Income from Residuary Sources unless :
 - Utilised to purchase Annuity Plan or
 - Rolled over into another account
- Annuity received taxable as Income from Residuary Sources



Mutual Funds

- Dividend received by Mutual Fund not subject to Dividend Distribution Tax
- No Income Distribution Tax on Distribution of Income
- Income of Mutual Fund exempt
- No deduction for investment by investor in Mutual Fund
- No tax on income received by investor in respect of units of a Mutual Fund – intention only dividend through mutual fund?
- Character of mutual fund income
- Capital Gains on sale/redemption of Units – how liable to tax ? Whether income received in respect of units of mutual fund?
- Advisable to encash equity oriented scheme units to book gains prior to 31.3.2011 & make fresh purchase



Venture Capital Funds/Companies

- Defined under clauses 310 & 311 of s. 284
- Such Company/fund:
 - which has been granted a certificate of registration as a venture capital fund under the SEBI Act, 1992; &
 - which fulfils all other conditions as may be prescribed in this behalf;
- Would include Foreign Venture Capital Investor
- Included in the definition of mutual fund – clause 174 of s.284
- No Dividend Distribution Tax in respect of dividend paid to VCC/VCF
- Income of VCF/VCC not taxable
- Income of Investor – whether taxable under respective heads, except for dividend received through VCC/VCF?

Non Profit Organisations (NPOs)



- Specific exemption for Schools, Hospitals, etc. eliminated
- Special scheme of computation of income for NPOs under Chapter IV and not scheme of exemption
- Exemption for Prime Minister's National Relief Fund and a few other funds under Seventh Schedule
- Concept of commercial income done away with
- Income and deductions to be computed on cash basis
- Capital gains on transfer of financial assets to be computed in accordance with normal provisions for capital gains
- Gross Receipts less Outgoings in relation to activities taxable, plus capital gains
- Tax rate of 15%
- Religious trusts other than those registered under any Central, State or Provincial Government Religious Endowment Law not eligible for exemption
- Income of registered Religious Endowments totally exempt – What if state does not have Religious Endowments Act ?



Definition of NPO

- Organisation by whatever name called (including a trust) if:
 - Established for benefit of general Public
 - Established for carrying on permitted welfare activities
 - Not established for benefit of any particular caste
 - Not established for benefit of its members
 - Actually carries on permitted welfare activities during the year
 - Actual beneficiaries of its activities are general public
 - No intention to apply surplus/income or use assets or incur expenditure for benefit of interested person
 - No benefit to any interested person exceeding Rs.1,000
 - Funds not invested in any prohibited modes
 - Maintains prescribed books of account
 - Registered with CCIT/CIT
 - Obtains Audit Report
- If any one of above conditions not satisfied, not NPO



Effect of Ceasing to be NPO

- Net worth liable to tax at 30% on:
 - Conversion to form of organisation not qualifying as NPO
 - Cessation to be NPO in financial year & 2 of 4 preceding financial years
 - Failure to transfer all assets to another NPO on dissolution
- Net worth on last day of financial year or first day?
- What if not NPO from effective date of DTC? Whether retroactive operation?
- If not NPO in any year, income to be computed under normal provisions
- Taxable as Unincorporated Body at flat rate of 30%
- Double taxation of income taxed in 2 earlier years when not NPO



Gross Receipts

- Voluntary Contributions received
- Rent from building & appurtenant land – what if only land?
- Business Income from incidental business (including consideration for transfer of business capital asset), if does not involve activity of advancement of any other object of general public utility
- Consideration on transfer of investment asset (other than financial asset)
- Income from investment of funds or assets
- Any incoming, realisation, proceed, donation, or subscription received from any source
- Not to include:
 - loans, borrowings & advances
 - Income from transfer of investment asset, being financial asset



Outgoings

- Voluntary Contributions to Corpus
- Expenditure (other than capital expenditure) for earning or obtaining any receipts
- Expenditure (other than capital expenditure) for carrying out permitted welfare activity
- Capital Expenditure for purposes of incidental business, if does not involve activity of advancement of any other object of general public utility
- Capital Expenditure in relation to Investment Asset, other than financial asset
- Donations to Other NPO engaged in similar permitted welfare activity – meaning of similar?
- Amount applied outside India if for activity which tends to promote international welfare in which India is interested, & if NPO notified by Central Govt.



Some Aspects of NPO Taxation

- Position of partly charitable partly religious trusts
- Meaning of “particular caste” as opposed to “particular community”
- Feeder charities – whether eligible? Actual Beneficiaries vs. Immediate Beneficiaries
- No option to spend in subsequent years
- No accumulation possible (not 15%, nor for 5 years)
- Depreciation would not be permissible
- Carry forward of deficit would not be allowable
- What happens to accumulation of past years if not spent?
- What happens to option exercised in earlier year to spend in subsequent year?
- Whether profits of business also to be computed on cash basis?
- No separate provisions for taxation of anonymous donations



Thank you!

