

# **Draft Direct Taxes Code Bill 2009**

## **A Reform in Indian Taxation**

### **Index**

1. Introduction
2. Important events
3. Salient features
4. Highlights
5. Preliminaries
  
6. Rates of taxes
7. Arrangement of sections
8. Basis of charge
9. Residential status
10. Clubbing of Income
11. Persons not liable to Income tax
12. Classification of income
13. Income from employment
14. Income from house property
15. Income from business
16. Income from residuary sources
17. Aggregation of income
18. Presumptive taxation
19. Tax deducted at source
20. Taxation of Limited Liability partnership
21. Provision of non-residents

## **History of Taxation**

A **Tax** is a compulsory charge or other levy imposed on an individual or a legal entity by a state or a functional equivalent of a state. The history of taxation dates back to time immemorial and it is not a recent development by any account. It suggests that all historical leaders and head countrymen collected taxes to run its authority. In other words taxes on income, sale, purchase and properties were collected to run the ruling Government machineries. Further, these taxes were collected to meet their military and civil expenditure and also to meet the common needs. There are evidences of early civilizations using income tax. A ruler collects a portion of people's properties to finance in materials needed during financial crisis, help the needy and to increase the power and wealth of the rulers. In the Middle East, rulers collected the money from taxation to pay for the cost needed in building public artifacts like monuments and temples. Some of the money was used to finance warfare. Taxation originated there and was spread around the world.

### **Around the world**

It is believed that the first systematic taxation existed in Egypt, China and Mesopotamia. The ancient Egypt had to kneel down before the pharaoh's tax collector and beg for mercy. In China Confucius was the tax-overseer for Prince Chau. Caesar Augustus was considered by many to be the most brilliant tax strategist of the Roman Empire. During his reign as "First Citizen" the publicani were virtually eliminated as tax collectors for the central government. During this period cities were given the responsibility for collecting taxes. Caesar Augustus instituted an inheritance tax to provide retirement funds for the military. There were certain times in the middle Ages where the governments did not explicitly tax, since they were self supporting, owning their own land and creating their own products. The appearance of doing without taxes was however illusory, since the government's (usually the Crown's) independent income sources depended on labour enforced under the feudal system, which is a tax exacted in kind.

The word 'tax' first appeared in the English language only in the 14th century. It derives from Latin word 'taxare' which means 'to assess'. Before that, English used the related word 'task', derived from Old French. For a while, 'task' and 'tax' were both in common use, the first requiring labour, the second money. 'Tax' then developed its meaning to imply something wearisome or challenging. So words like 'duty' was used to suggest a more appealing purpose.

In England, an attempt was made in 1404 to collect real taxes based on the people's wages. However, the public refused the proposal and the method was repealed. Tax records were burned. The first development of modern income tax occurred on 1719 in England. This tax was used to finance warfare against France during the Napoleonic Wars. This helped Britain and its other European allies win in 1815. Other European countries like Germany, the Netherlands, Sweden, Switzerland and others adopted the method and thus it was spread.

In the United States a direct tax was placed on citizens after drafting the Constitution in 1787. The Supreme Court supported the government's first income tax during the Civil War in 1862. The Union government found financial burdens for warfare, just by using taxes based on tariffs so the government used income tax for emergency reasons. It was then improved in 1864 and was achieving a good rate since it imposed heavier tax burdens on people with a larger income than most. After the war, it was repealed in 1872.

Taxes have been a major subject of political controversy throughout history, even before they constituted a sizable share of the [national income](#).

## **History of Taxation in India**

*"It was only for the good of his subjects that he collected taxes from them, just as the Sun draws moisture from the Earth to give it back a thousand fold"*

*--Kalidas in Raghuvansh eulogizing KING DALIP*

The income tax system has been in existence since time immemorial. Even Manusmriti and Arthshastra have mention of it. According to Kautilya who gave much importance to public finance and taxation system, the power of the government depended upon the strength of its treasury. He states – "From the treasury, comes the power of the government, and the Earth whose ornament is the treasury, is acquired by means of the Treasury and Army". Kautilya also laid down that during war or emergencies like famine or floods, etc. the taxation system should be made more stringent and the king could also raise war loans. The land revenue could be raised from 1/6th to 1/4th during the emergencies. The people engaged in commerce were to pay big donations to war efforts.

Taking an overall view, it can be said without fear of contradiction that Kautilya's Arthashastra was the first authoritative text on public finance, administration and the fiscal laws in this country. His concept of tax revenue and the on-tax revenue was a unique contribution in the field of tax administration. In that reign tax revenues were given its due importance in the running of the State and its far-reaching contribution to the prosperity and stability of the Empire. It is truly an unique treatise. It lays down in precise terms the art of state craft including economic and financial administration. Collection of Income-tax was well organised and it constituted a major part of the revenue of the State.

## **System in Modern India**

The history of Direct taxes in modern India dates back to 1860 when the first Income Tax Act was introduced by British Government who became (British) India's first finance member. This Act lapsed in 1865. Thereafter Act-II of 1886 was the next landmark. Then in the year 1918 with the introduction of Act VII of 1918, the entire tax law has been recasted. This Act was designed keeping in mind the remedy to certain inequalities in the assessment of individual tax payers under the 1886 Act. The Act introduced the scheme of aggregating income from all sources for the purpose of determining the rate of tax.

Although, it was highly in favor of the [British government](#) and its exchequer but it incorporated modern and scientific method of taxation tools and systems. In 1922, the country witnessed a paradigm shift in the overall [Indian](#) taxation system. Setting up of administrative system and taxation system was first done in the history of taxation system in India. The present day tax structure of India finds its root in the first draft of Indian taxation system, which was incorporated in 1922. Indian Income Tax Department's history began in 1922, with a law being passed to give a specific nomenclature to various tax authorities.

In 1924, Central Board of Revenue Act constituted the board as a statutory body with functional responsibilities for the administration of the then new Income Tax Act.

Commissioners of Income- tax were appointed separately for each province and Assistant Commissioners and Income-tax Officers were provided under their control. During 1940 to 1947, Excess Profits Tax and Business Profits Tax were introduced and their administration handed over to the Department (These were later repealed in 1946 and 1949 respectively). In 1951, the 1st Voluntary Disclosure Scheme was brought in.

The developing nature of the economy of the country brought with it both steep rates of taxes and black incomes. In 1965, again the Voluntary Disclosure Scheme was brought in followed by the 1975 Disclosure Scheme. Finally, the need for a permanent settlement mechanism resulted in the creation of the Settlement Commission.

Certain important policy and administrative reforms carried out over the past few years are as follows:-

(a). The policy reforms include :-

- Lowering of rates;
- Withdrawals/reduction of major incentives;
- introduction of measures for presumptive taxation;
- simplification of tax laws, particularly relating to capital gains; and
- widening the tax base.

(b). The administrative reforms include :-

- Computerisation involving allotment of a unique identification number to tax payers which is emerging as a unique business identification

number;

- realignment of the available human resources with the changed business needs of the organisation.

**Reforms in Direct Taxes code 2009**

Taxation has always been a topic occasioning acrimonious debates and whenever a budget is passed there is a strong resentment over taxes and government spending.

Reform is not an event it is always a continuous process. In the recent past, the taxation system has undergone tremendous change. The tax rates have been restructured and tax laws have been drafted and amended so as to result in better compliance, ease of tax payment and better enforcement. The process of rationalization of tax administration is ongoing in India.

The Direct Tax Code aims to completely overhaul, simplify and replace the existing Income Tax Act 1961. The code in simple form is expected to eliminate distortion, minimize the litigation and to improve better compliance and better collection of taxes. The antiquated rules have been replaced in this new proposal. The entire framework of the Act has been changed and the changes are dramatic and path breaking. It hopes to create a modern progressive regime of taxation in India. The new system has given the common man more than what has been expected. The new code has sought to make major changes in Wealth Tax and also recast the powers of Central Board of Direct Taxes (CBDT) induce more transparency in decision making. All direct taxes have been brought under one code including Fringe Benefit Taxes.

The code, which the government plans to enact and implement from 2011 onwards with suitable changes if required, envisages meaningful reduction in the tax rates while simultaneously being revenue neutral for the government. It aims to achieve this by increasing the tax base and rationalizing the multitude tax incentives prevalent under the current law. In our view, the overall changes proposed will be quite beneficial for a number of sectors and companies, albeit definitively withdrawing tax holidays being currently enjoyed by different sectors, something that has been contemplated and proposed often in the past and therefore should not come as a major negative surprise.

The Tax code proposes a significant increase in the tax slabs for personal income tax which, if implemented, will result in a meaningful increase in disposable income, especially benefiting FMCG and other domestic consumption stories. At the same time, the code proposes to do away with the distinction between long and short-term capital gains and abolish the Securities Transaction Tax (STT), effectively taxing all capital gains at the applicable marginal tax rate for the tax-payers' total income. At present, the long-term capital gains tax is Nil on equity

transactions on which STT is paid and 20% on all other assets, while the short-term capital gains tax rate is 10% on equity transactions on which STT is paid and 30% on other assets. In our view, the proposed increase in tax slabs is quite substantial in view of the country's per capita income distribution, and should reduce the impact of the proposed increase in capital gains tax rates.

Moderate rate of taxes not only result in better tax compliance but also help in attracting Foreign Direct Investment (FDI). Profit based incentives has been replaced by investment based incentive schemes.

**Important events affecting the administrative set up in the Income-tax department:**

- 2002**
- Computerised processing of returns all over the country introduced.
  - Kelkar Committee Report, inter alia, recommended :-
    - i. Outsourcing of non-core functions of the department ;
    - ii. Reduction in exemptions, deductions, reliefs, rebates etc.

The salient features of the code are as under:

**1. Single Code for direct taxes**

All the direct taxes have been brought under a single code and compliance procedures unified. This will eventually pave the way for a single unified taxpayer reporting system.

**2. Use of simple language**

With the expansion of the economy, the number of taxpayers can be expected to increase significantly. The bulk of these taxpayers will be small paying moderate amounts of tax.



Therefore, it is necessary to keep the cost of compliance low by facilitating voluntary compliance by them.

This is sought to be achieved, inter alia, by using simple language in drafting so as to convey, with clarity, the intent, scope and amplitude of the provision of law. Each sub-section is a short sentence intended to convey only one point. All directions and mandates, to the extent possible, have been conveyed in active voice.

Similarly, the provisos and explanations have been eliminated since they are incomprehensible to non-experts. The various conditions embedded in a provision have also been nested. More importantly, keeping in view the fact that a tax law is essentially a commercial law, extensive use of formulae and tables has been made.

### **3. Reducing the scope for litigation**

Wherever possible, an attempt has been made to avoid ambiguity in the provisions that invariably give rise to rival interpretations. The objective is that the tax administrator and the tax payer are ad idem on the provisions of the law and the assessment results in a finality to the tax liability of the tax payer. To further this objective, power has also been delegated to the Central Government/Board to avoid protracted litigation on procedural issues.

### **4. Flexibility**

The structure of the statute has been developed in a manner which is capable of accommodating the changes in the structure of a growing economy without resorting to frequent amendments. Therefore, to the extent possible, the essential and general principles have been reflected in the statute and the matters of detail are contained in the rules/Schedules.

To ensure that the law can be reflected in a Form: For most taxpayers, particularly the small and marginal category, the tax law is what is reflected in the Form. Therefore, the A-10 structure of the tax law has been designed so that it is capable of being logically reproduced in a Form.

### **5. Consolidation of provisions**

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In order to enable a better understanding of tax legislation, provisions relating to definitions, incentives, procedure and rates of taxes have been consolidated. Further, the various provisions have also been rearranged to make it consistent with the general scheme of the Act.

### **6. Elimination of regulatory functions**

Traditionally, the taxing statute has also been used as a regulatory tool. However, with regulatory authorities being established in various sectors of the economy, the regulatory function of the taxing statute has been withdrawn. This has significantly contributed to the simplification exercise.

### **7. Providing stability**

At present, the rates of taxes are stipulated in the Finance Act of the relevant year. Therefore, there is a certain degree of uncertainty and instability in the prevailing rates of taxes. Under the code, all rates of taxes are proposed to be prescribed in the First to the Fourth Schedule to the code itself thereby obviating the need for an annual Finance Bill. The changes in the rates, if any, will be done through appropriate amendments to the Schedule brought before Parliament in the form of an Amendment Bill.

## **Major Highlights of the Draft Direct Tax Code Bill 2009**

**Change in nomenclature:** A unified financial year term replaces assessment year and previous year

**Rise in tax slabs:** The 10 per cent tax bracket raised up to Rs 10 lakh, 20 percent between Rs 10 and 25 lakh and 30 per cent for over Rs 25 lakh.

**Salary perks as part of income:** Would include perks like house rent, leave travel allowance, medical reimbursement

**Gratuity on change of jobs:** Will be tax-exempt on change of jobs only if it is invested in a retirement fund

**Rate of wealth tax:** Reduced from 1 per cent to 0.25 per cent

**80C limit:** From Rs 1 lakh at present to Rs 3 lakh for a Hindu undivided family (HUF) or individual

**Exempt-Exempt-Tax (EET):** New tax regime for all provident funds, superannuation funds, life insurance and New Pension Scheme (NPS). These investment to be taxed on withdrawal

**Housing Deduction:** The deduction of Rs 1.5 lakh for housing loan interest payment removed for a self-occupied residence

**Gross Rent Calculation:** The gross rent for calculating income tax will be based either on the rent that the house owner has contracted or on the presumptive rent, whichever is higher.

**Joint Ownership:** If two people own the house, the tax will be levied based on the proportion of their ownership

**Rent Deductions Capped:** The deduction from gross rent for any repair work or municipal taxes is capped at 20 per cent from the earlier 30 per cent

**Distinction Scrapped:** The distinction between short- and long-term capital gains tax scrapped

**Indexation benefit:** One year cap remains to avail indexation benefits. The same applied for house sold after one year

**Rate of Capital Gains:** The rate of capital gains tax as per income slab of the person

**Exceptions:** Capital gains will not apply to transfer of assets on partition of Hindu undivided family, gifts, transfer under an irrevocable trust, of any investment asset, other than sweat equity share

### **Classification of source of Income (Section 12)**

**For the purpose of computation of total income of any person for any financial year, income from all sources shall be classified under the following :**

- **Income from Special Sources**
- Items listed in the Table in Rule 3 of the First Schedule shall be considered as income from special sources
- **Income from Ordinary Sources**
- All income accruing from a source other than the special sources, shall be classified under the following heads of income
  - Income from Employment
  - Income from House Property
  - Income from Business
  - Capital Gain

- Income from Residuary Sources

**Liability under Minimum Alternate Tax (MAT):** a radical change has been proposed under the scheme of MAT. The code provides for MAT calculated with reference to the “Value of the Gross Assets” and not according to the existing book profit method. The rate of MAT as proposed is 2 percent of the value of the gross assets. The same shall be 0.25 percent in case of banking companies.

**Set off MAT credit:** – Under the code it has been proposed that MAT will be a final tax and hence it would not be allowed to be carried forward for claiming tax credit in subsequent years.

**Wealth Tax** :- The Individual and HUF has been included under the purview of wealth tax. Further, the exemption limit for them has been fixed at Rs. 50 crores. Rate has been fixed at 0.25%.

### **Others**

Income Tax Authorities shall now also include Transfer Pricing officer.

Due date of filing of return in case of companies proposed to be 31<sup>st</sup> August.

The time limit for filing revised return will be limited to 21 months from the end of the relevant financial year.

Under the code, the time limit for filing an appeal before higher forum i.e CIT(A), ITAT , shall be thirty days from the date of receipt of the order.

### **Preliminaries**

- i. Income Tax in India is governed by Income Tax Act 1961.
- ii. It came into force from 01.04.1962.
- iii. The Act contains 298 Sections and XIV Schedules
- iv. The Finance Act shall bring amendment to this Act year by year
- v. The law provides for determination of taxable income, tax liability, procedure for assessment, appeal, penalties and prosecutions.

- vi. Finance minister presents Finance Bill in both the houses of the parliament.
- vii. Once the Bill is passed in the parliament and get the assent of the President it becomes the Finance Act
- viii. Finance Act brings amendments to both Direct Taxes (Income Tax, Wealth Tax, etc) and Indirect Taxes (Central Excise, Customs, Service Tax, etc)
- ix. The administration of Direct Taxes is with Central Board of Direct Taxes (CBDT). The Income Tax Act 1961 empowers CBDT to frame rules from time to time to carry out the purpose and proper administration of the Act.
- x. Rule framed by CBDT named Income Tax Rules 1962 prescribes Forms , Procedures , Principles of Valuation of Perquisites etc. which are to be followed while computing the income, tax, Payment of taxes and filing of income tax return.
- xi. The Act also empowers CBDT to issue circulars, notifications from time to time. These releases clarify the doubts regarding the scope, object and meaning of various provisions of Act. The circulars are binding on assessing officers but not on Assesses and Courts. The circulars issued by CBDT should not be inconsistent with the Provisions of the Act.
- xii. The Supreme Court and High courts can give judgement on the question of law. The decisions of High Courts shall apply in respective States, within its jurisdiction. The law laid down by the Supreme Court is the law of the land.
- xiii. Income Tax shall be charged at the rates prescribed by the Annual Finance Act. First Schedule of the Finance Act prescribes the rates of taxation. The rates of tax to be deducted at source (TDS) shall also be prescribed in the Finance Act First Schedule.
- xiv. Finance Act generally prescribes the rates of tax. However in respect of certain incomes the specific rates are prescribed in Income tax itself such as taxes on Short Term Capital

Gains on transfer of listed securities (Sec 111A), Long Term Capital Gains (Sec 112) etc.

**Rates of Taxes, a glance**

Tax rate describes the burden ratio (generally expressed in percentage). **Income Tax Rate** is an essential part of the income tax as levied by the Indian government on taxable incomes of the individuals, companies, and co-operative societies, and trusts. The First Schedule of the Draft Direct Taxes Code Bill 2009 prescribes the rates of taxes for various assesses.

**Individuals & HUFs**

The slab for the tax payment of the individuals is different for women or for senior citizens. Moreover India Income Tax Rate also varies according to the income level of different individuals. The Tax Code has raised income tax slabs significantly, lowering the tax burden on individuals.

(I) In case of Individual and HUF

<b>Income Slab under Income Tax Act 1961 (AY: 2010-11)</b>	<b>Income Slab under Direct Taxes Code 2009</b>	<b>Rate of Taxes</b>
where the total income does not exceed Rs.1,60,000	where the total income does not exceed Rs.1,60,000	Nil
where the total income exceeds Rs.1,60,000 but does not exceed Rs.3,00,000	where the total income exceeds Rs.1,60,000 but does not exceed Rs.10,00,000	10 percent
where the total income exceeds Rs.3,00,000 but does not exceed Rs.5,00,000	where the total income exceeds Rs.10,00,000 but does not exceed Rs.25,00,000	20 percent
where the total income exceeds Rs.5,00,000	where the total income exceeds Rs.25,00,000	30 percent

In the case of every individual, being a woman resident in India, and below the age of sixty-five years at any time during the financial year,—

<b>Income Slab under Income Tax Act 1961</b>	<b>Income Slab under Direct Taxes Code 2009</b>	<b>Rate of Taxes</b>
where the total income does not exceed Rs.1,90,000	where the total income does not exceed Rs.1,90,000	Nil
where the total income exceeds	where the total income exceeds	10 percent

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Rs.1,90,000 but does not exceed Rs.3,00,000	Rs.1,90,000 but does not exceed Rs.10,00,000	
where the total income exceeds Rs.3,00,000 but does not exceed Rs.5,00,000	where the total income exceeds Rs.10,00,000 but does not exceed Rs.25,00,000	20 percent
where the total income exceeds Rs.5,00,000	where the total income exceeds Rs.25,00,000	30 percent

In the case of every individual, being a resident in India, who is of the age of sixty-five years or more at any time during the financial year,—

<b>Income Slab under Income Tax Act 1961</b>	<b>Income Slab under Direct Taxes Code 2009</b>	<b>Rate of Taxes</b>
where the total income does not exceed Rs.2,40,000	where the total income does not exceed Rs.2,40,000	Nil
where the total income exceeds Rs.2,40,000 but does not exceed Rs.3,00,000	where the total income exceeds Rs.2,40,000 but does not exceed Rs.10,00,000	10 percent
where the total income exceeds Rs.3,00,000 but does not exceed Rs.5,00,000	where the total income exceeds Rs.10,00,000 but does not exceed Rs.25,00,000	20 percent
where the total income exceeds Rs.5,00,000	where the total income exceeds Rs.25,00,000	30 percent

**Co-Operative Societies**

<b>Income Slab under Income Tax Act 1961</b>	<b>Income Slab under Direct Taxes Code 2009</b>	<b>Rate of Taxes</b>
where the total income does not exceed Rs.10,000	where the total income does not exceed Rs.10,000	10 percent
where the total income exceeds Rs.10,000 but does not exceed Rs.20,000	where the total income exceeds Rs.10,000 but does not exceed Rs.20,000	20 percent
where the total income exceeds Rs.20,000	where the total income exceeds Rs.20,000	30 percent

In the case of other societies the rate of income tax is 30 per cent.

In the case of every Non-Profit Organisation the rate of income tax is 15 per cent.

**Unincorporated Body:**

Unincorporated body in direct taxes code refers to

- A Partnership Firm
- An association of persons
- A body of Individuals

The rate of Income tax for unincorporated body under this Direct taxes code is 30 percent.

**Local authority:**

The rate of income tax for local authority is 30 percent.

**Companies:**

In case of a company, including a foreign company the rate of tax on the whole of the total income is 25 percent.

**Tax on Gross Assets**

The following rate of TAX ON GROSS ASSETS shall be applicable as under Direct Taxes Code 2009 for both domestic and foreign companies

<b>Particulars</b>	<b>Under DTC 2009</b>	<b>Under Income Tax Act, 1961</b>
Method of Computation	On the value of gross assets on the close date of the financial year	On the value of Book Profits
Rate of Tax	Banking Company – 0.25% Other Company – 2 %	Both Domestic and Foreign Company – 10%

**Taxes on distribution of dividend**

There is no change in the direct tax codes in the rate of taxation of dividend distribution. The rate of tax on amount of dividends whether interim or otherwise declared by the company is 15 per cent.

**Tax on branch profits**

Every foreign company shall be liable to branch profits tax, at the rate of 15 per cent on its branch profits. The branch profits shall be the total income for the financial year as reduced by the amount of income tax thereon.

**Wealth Tax**

Where the net wealth of the assessee as on valuation date exceeds rupees fifty crores 0.25 per cent of amount by which the net wealth exceeds rupees fifty crores.



**CHAPTER-I  
PRELIMINARY**

1	Short title, extent and commencement	1
---	--------------------------------------	---

**PART-A**

**CHAPTER-II  
BASIS OF CHARGE**

2	Liability to pay income-tax	4
3	Scope of total income	5
4	Residence in India	6
5	Income deemed to accrue in India	9
6	Income deemed to be received in the financial year	7
7	Total income to include income of any other person	60
8	Total income to include income of spouse, minor child, etc	64
9	Income not included in the total income	10
10	Persons not liable to income-tax	

**CHAPTER-III  
COMPUTATION OF TOTAL INCOME**

**A-General**

11	Interpretation	
12	Classification of sources of income	
13	Computation of income from special sources	
14	Computation of income from ordinary sources Apportionment of income between spouses governed by Portuguese	14
15	Civil Code	5A
16	Avoidance of Double Taxation	
17	Expenditure not to be allowed as deduction	
18	Amount not deductible where tax is not deducted at source	

**B- Income from Employment**

19	Income from employment	15
20	Computation of income from employment	15
21	Scope of gross salary	15
22	Deductions from gross salary	16

**C- Income from house property**

23	Income from house property	22
24	Computation of income from house property	23
25	Scope of gross rent	
26	Deductions from gross rent	24
27	Special provision from advance rent received	

**D- Income from business**

28	Income from business	29
29	Distinct and separate business	
30	Computation of income from business	29
31	Gross earnings	

## Draft Direct Taxes Code Bill 2009

32	Deductions for business expenditure	30-38
33	Deductions for operating expenditure	30-38
34	Deductions for permitted finance charges	
35	Computation of capital allowances	
36	Computation of depreciation	32
37	Deduction for intial depreciation	32
38	Deduction for terminal allowance	32
39	Deduction for scientific research and development allowance	35
40	Profit on transfer of a business capital asset	
41	Special provisions relating to business reorganisations	
42	Meaning of actual cost	
43	Meaning of written down value, adjusted value of assets	
	<b>E- Capital gains</b>	
44	Capital gains	45
45	Income from certain transfers not to be treated as capital gains	47
46	Financial year of taxability	
47	Computation of income from the transfer of any investment asset	
48	Full value of the consideration	
49	Deductions for cost of acquisition, inflation,adjustment etc	
50	Indexed cost of acquisition	
51	Cost of acquisition of an investment asset	
52	Cost of improvement	
53	Relief for rollover of investment asset	
	<b>F- Income from residuary sources</b>	
54	Income from residuary sources	56
55	Computation of income from residuary sources	56
56	Gross residuary income	56
57	Deductions	57
	<b>G-Aggregation of income</b>	
	Aggregate of income under the class 'Income from Ordinary	
58	Sources	70-71
59	Aggregate of income under the class 'Income from Special Sources	
60	Determination of total income	
61	Special provisions relating to business reorganisation	72
	Aggregation of losses in case of change in constitution of	
62	unincorporated body	
63	Aggregation of losses in case of certain companies	
	Aggregation of loss not to be allowed in the case of filing of return	
64	after due date	80
	<b>H- Tax incentives</b>	
65	Deductions to be made in computing total income	80
66	Deductions for savings	80C
67	Deductions in respect of children education	80C

## Draft Direct Taxes Code Bill 2009

68	Deduction in respect of interest on loan taken for higher education	80E
69	Deduction in respect of health insurance premia	80D
70	Deduction in respect of medical treatment, etc	80DD
71	Deduction in respect of maintainance of disabled dependent Deduction in respect of donations to certain funds, non-profit	80DDB
72	organisations, etc	80G
73	Deduction in respect of political contributions	80GGB
74	Deduction in respect of interest income on bonds	
75	Deduction in respect of income of Investor Protection Fund	
76	Deduction in respect of certain income of trade Unions Deduction in respect of royalty income, etc of author of certain	
77	books	80QQB
78	Deduction in respect of royalty on patents	80RRB
79	Deduction in case of a person with disability Deduction in respect of income of co-operative society from	80U
80	banking activities	80P
81	Deduction in respect of income of primary cooperative societies Expenditure for promoting family planning and preventing HIV-	
82	aids	

### **I- Maintainance of accounts and other related matters**

83	Maintainance of accounts	44AA
84	Tax audit	44AB
85	Method of accounting	145

## **CHAPTER - IV**

### **SPECIAL PROVISIONS RELATING TO COMPUTATION OF TOTAL INCOME OF NON-PROFIT ORGANISATIONS**

86	Applicability of this Chapter	
87	Total income of a non-profit organisation	
88	Computation of total income of a non-profit organisation	
89	Gross receipts in the case of a non-profit organisation	
90	Outgoings in the case of a non-profit organisation	
91	Prohibited forms and modes of investment Deemed use or application of funds or assets for the benefit of	
92	interested person	
93	Registration of the non-profit organisation	
94	Consequences of conversion of a non-profit organisation	
95	Provisions of this Chapter not to apply in certain cases	
96	Interpretations	

## **CHAPTER - V**

### **COMPUTATION OF THE VALUE OF GROSS ASSETS**

97	Computation of the value of gross assets	115JA
98	Preparation of balance sheet for computing gross assets	115JA

## **PART-B**

**CHAPTER VI  
SPECIAL PROVISIONS RELATING TO TAX  
ON DISTRIBUTED INCOME**

99 Tax on dividends distributed 1150

**PART-C**

**CHAPTER-VII**

**CHARGE OF BRANCH PROFITS TAX**

100 Tax on Branch Profits

**PART-D**

**CHAPTER-VIII**

**WEALTH-TAX**

101 Charge of wealth-tax 3

102 Computation of net wealth

103 Net wealth to include certain assets 4

**PART-E**

**CHAPTER-IX**

**SPECIAL PROVISIONS TO PREVENT EVASION**

104 Disallowance of expenditure having regard to fair market value 92-93  
Computation of income from international transaction having

105 regard to arm's length price 92-93

106 Computation of arm's length price 92-93

107 Advance pricing agreement 92-93

Avoidance of income-tax by transactions resulting in transfer of

108 income to non-resident 92-93

109 Avoidance of tax by sale and buy-back transaction in security 92-93

110 Avoidance of tax by buy and sale-back transaction in security 92-93

111 Broken-period income accruing from debt instrument 92-93

112 General anti-avoidance rule 92-93

113 Interpretation 92-93

114 Presumption of purpose 92-93

**PART-F**

**CHAPTER-X**

**TAX ADMINISTRATION AND PROCEDURE**

**A-Tax Administration**

115 Establishment of institutions

116 Establishment of Central Board of Direct Taxes

117 Management of the Board

118 Delegation

Term of office and conditions of service of Chairman and Members

119 of the Board

120 Meetings

121 Secretariat of the Board

122 Attached offices of the Board

## Draft Direct Taxes Code Bill 2009

123	Subordinate offices of the Board	
124	Functions of the Board	
125	Grants by the Central Government	
126	Accounts and audit	
127	Power of Central Government to issue directions	
128	Returns and reports	
129	Establishment of Income Tax Department	
130	Income-tax Authorities	116
131	Appointment and control of Income-tax authorities	
132	Power of higher authorities	
133	Instructions by the Board	
134	Jurisdiction of the Income-tax authorities	
135	Jurisdiction of Assessing Officers	
136	Power to transfer cases	
137	Change of incumbent	
138	Powers regarding discovery, production of evidence, etc	131
139	Search and Seizure	132
140	Powers to requisition material taken into custody Retention and release of books of accounts or documents seized or	
141	requisitioned	
142	Delivery of material belonging to other persons	
143	Retention and application of seized or requisitioned assets	
144	Power to call for information	
145	Power of survey	133A
146	Power to disclose information in respect of assessee	138
147	Proceedings before tax authorities to be judicial proceedings	136
<b>B-Assessment Procedure</b>		
148	Self reporting of tax bases	
149	Reporting of international transaction	
150	Tax Return Preparer	
151	Issue of notice to stop-filer	
152	Issue of notice to non-filer	
153	Self-assessment tax	140A
154	Acknowledgement of return	
155	Processing of return	
156	Selection of returns for scrutiny assessment	
157	Notice for scrutiny assessment	
158	Special audit	142(2A)
159	Determination of value of assets	
160	Determination of arm's length price Determination of impermissible avoidance arrangement and	
161	consequences thereof	
162	Assessment	143

163	Best judgement assessment	144
164	Directions for assessment by Joint Commissioner	
165	Directions for assessment by Dispute Resolution Panel	
166	Reopening of assessment	
167	Rectification of mistake	
168	Notice of demand	
169	Time limits for completion of assessment or reassessments	

**C-Procedure for Assessment in Special cases**

170	Representative assessee	
171	Rights and obligations of a representative assessee	
172	Direct assessment of recovery not barred	
173	Remedy against property in case of representative assessee	
174	Assessment upon business reorganisation	
175	Assessment after partition of a Hindu undivided family	
176	Assessment of non-resident in respect of the shipping business	
177	Assessment of persons leaving India	
178	Assessment of entity formed for a particular event or purpose	
179	Assessment of persons likely to transfer property to avoid tax	
180	Assessment of firm in case of change in its constitution	
181	Assessment on the retirement or death of the participant	
182	Assessment of a deductor or collector	

**D-Appeals and Revision**

183	Appeal to Commissioner (Appeals)	246A
184	Form of appeal and limitation	249
185	Procedure in appeal	250
186	Powers of the Commissioner (Appeals)	251
187	Appellate Tribunal	252
188	Appeals to the Appellate Tribunal	253
189	Stay of demand by the Appellate Tribunal	
190	Orders of the Appellate Tribunal	254
191	Procedure of the Appellate Tribunal	255
192	Appeals to the National Tax Tribunal	
193	Appeals to the Supreme Court	261
194	Revision of orders prejudicial to revenue	263

**CHAPTER-XI**

**COLLECTION AND RECOVERY**

**A-Deduction at source**

195	Liability to deduct tax at source	
196	Payment of income and deduction of tax	190
197	Certificate for no deduction of tax	
198	Payment of tax deducted, certificate to deductee, etc	
199	Reporting of payments without deduction of tax	206A
200	No deduction of tax in certain cases	197A

## Draft Direct Taxes Code Bill 2009

201	Credit for tax deducted	199
<b>B-Collection at Source</b>		
202	Tax collection at source	206C
203	Certain definitions	
<b>C-Advance Tax</b>		
204	Liability to pay advance income-tax	207
<b>D-Tax credit for relief in respect of payments received in arrears or in advance</b>		
205	Tax relief for arrears or advance receipts	
<b>E-Foreign Tax credit</b>		
206	Foreign tax credit	
<b>F-Payment of Dividend distribution Tax</b>		
207	Payment of dividend distribution tax	1150
<b>G- Payment of wealth-tax</b>		
208	Payment of wealth tax	
<b>H- Interest</b>		
209	Interest payable to the Central Government	
210	Interest payable to the assessee Manner of computation of interest and waiver thereof to be	
211	prescribed	
<b>I- Refund</b>		
212	Refunds	237- 245
<b>J- Recovery</b>		
213	Recovery by Assessing Officer	
214	Recovery by Tax Recovery Officer	
215	Modes of recovery	226
216	Tax Recovery Officer by whom recovery is to be effected	223
217	Recovery of tax arrear in respect of non-resident from his assets	
218	Recovery in case of a company in liquidation	
219	Liability of manager of a company	
220	Joint and several liability of participants	
221	Recovery of tax in pursuance of agreements with foreign countries	228A
222	Tax clearance certificate in certain cases	230
223	Recovery by suit or under other law not effected	232
<b>CHAPTER-XII PENALTIES</b>		
224	Penalty for under reporting of tax base	
225	Penalty where search has been initiated	
226	Penalty for other defaults	271-273
227	Procedure	274
228	Bar of limitation for imposing penalty	275

## **CHAPTER-XIII PROSECUTION**

**Draft Direct Taxes Code Bill 2009**

	Chapter not in derogation of any other law or any other provision of	
229	this Code	
230	Contravention of any restraint order	275A
	Failure to comply with the provisions of clause (d) of subsection (2)	
231	of section 139	
	Removal, concealment, transfer or delivery of property to thwart	
232	tax recovery	276
	Failure to comply with the provisions of subsection (1) and (3) of	
233	section 218	
	Failure to pay the tax deducted or collected at source or to pay the	
234	dividend distribution tax	276B
235	Willful attempt to evade tax, etc	276C
236	Failure to furnish returns of tax bases	276CC
237	Failure to furnish other returns, statements, reports etc	276CCC
238	Failure to comply with direction under this Code	275B
239	False statement in verification, etc	277
240	Falsification of books of account or documents, etc	277A
241	Abetment of false return, etc	278
242	Offences by companies, etc	278B
243	Proof of entries in records or documents	279B
244	Presumption as to assets, books of account, etc in certain cases	278D
245	Presumption as to culpable mental state	278E
	Prosecution to be at the instance of Chief Commissioner or	
246	Commissioner	279
247	Certain offences to be non-cognizable	279A
248	Disclosure of information by public servants	280

**CHAPTER-XIV  
ADVANCE RULING**

249	Definitions	245N
250	Scope of Ruling	
251	Authority for Advance Ruling	245O
252	Procedure for advance ruling	245R
	Income-tax authority or Appellate Tribunal not to proceed in certain	
253	cases	245RR
254	Applicability of Advance Ruling	245S
255	Advance ruling to be void in certain circumstances	245T
256	Powers of the Authority	245U
257	Procedure of Authority	245V

**PART-G  
CHAPTER-XV  
GENERAL**

258	Agreement with foreign countries	
-----	----------------------------------	--



## Draft Direct Taxes Code Bill 2009

259	Permanent account number	
260	Tax account number	
261	Document Identification Number	
262	Certain transfers to be void	281
263	Provisional attachment to protect revenue in certain cases	281B
264	Services of notice generally	282
265	Authentication of notices and other documents	
266	Notice deemed to be valid in certain circumstances Service of notice when family is disrupted or unincorporated body	
267	is dissolved	283-284
268	Publication of information respecting assessee in certain cases	287
269	Appearance by registered valuer in certain matters	288
270	Appearance by authorised representative	288
271	Rounding of tax bases, tax, etc	288A-288B
272	Indemnity	290
273	Power to tender immunity from prosecution	291
274	Cognizance of offences Section 360 of the Code of Criminal Procedure, 1973 and the	292
275	Probation of Offenders Act, 1958, not to apply	292A
276	Return of tax base, etc , not be invalid on certain grounds	292B
277	Presumption as to material found	292C
278	Bar of suits in civil courts	293
279	Power to rescind	
280	Power to make rules	295
281	Rules and certain notifications to be placed before Parliament	296
282	Repeals and savings	297
283	Power to remove difficulties	298

### **PART-H DEFINITIONS CHAPTER-XVI**

284	Definitions	2
285	Interpretation	

### **Basis of Charge**

#### **“Liability to pay Income Tax – Clause 2**

(1) Subject to the provisions of this Code, every person shall be liable to pay incometax in respect of his total income for the financial year.

(2) The liability to pay income-tax, referred to in sub-section (1), shall be the amount of income tax calculated at the rate specified in the First Schedule and in the manner provided therein.

(3) However, if a person is a company, the liability to pay income-tax referred to in sub-section (1) shall be the higher of the following amounts:-

(a) the amount of the liability calculated under sub-section (2); and

(b) the amount calculated at the rate specified in Paragraph A of the Second Schedule and in the manner provided therein.

(4) The liability to pay income-tax shall be discharged by payment of pre-paid taxes in accordance with the provisions of this Code.

(5) Without prejudice to the foregoing and subject to the provisions of this Code, every person may be charged in respect of his liability to pay income-tax referred to in sub-section (1).

(6) The income-tax charged under the foregoing provisions shall be collected after allowing credit for pre-paid taxes, if any, in accordance with the provisions of this Code.

(7) The liability to pay income-tax, or the chargeability thereof, under the foregoing provisions, for any financial year, shall be determined in accordance with the provisions of this Code as they stand on the 1st day of April immediately succeeding the last day of the financial year.”

The complexity in the terminology referring Assessment year and Previous year has been removed with the introduction new term “Financial year” in this code. All the references with respect to any obligation will be to respective financial year (i.e, in the year in which income is earned).This system will not change the existing tax deduction at source and payment of advance tax in the year of earning income and payment of self assessment tax in the following year before the filing of income tax return.

The rates of Taxes for various types of assesses are listed in Schedule I of this code. However in the case of Company assesses there is mandatory requirement to compute tax according to rates referred in Schedule I and Schedule – II (Minimum Alternative Tax) and the higher of the two shall be the liability.

Prepaid taxes refers to Tax deducted at source, Tax collected at source and Advance taxes or instalment taxes paid during the financial year. i.e., on or before 31<sup>st</sup> March of every financial year.

**Scope of total income – Clause 3**

“3. (1) Subject to the provisions of this Code, the total income for any financial year of a person, who is a resident, shall include all income from whatever source derived which-

(a) accrues, or is deemed to accrue, to him in India in the year;

(b) accrues to him outside India in the year;

(c) is received, or is deemed to be received, by him, or on his behalf, in India in the year; or

(d) is received by him, or on his behalf, outside India in the year.

(2) Subject to the provisions of this Code, the total income for any financial year of a person, who is a non-resident, includes all income from whatever source derived which-

(a) accrues, or is deemed to accrue, to him in India in the year; or

(b) is received, or is deemed to be received, by him, or on his behalf, in India in the year.

(3) Any income which accrues to a resident outside India in the year, or is received outside India in the year by, or on behalf of, such resident, shall be included in the total income of the resident, regardless of –

(a) the income having been charged to tax outside India; or

(b) the method for granting of relief for the avoidance of double taxation under any agreement referred to in section 258.”

The total Income of any financial year of a person shall be determined according to Sec 3. It states that the scope of total income depends upon the residential status of a person for the relevant financial year. The residential status of a person shall be determined according to Sec 4 of this code.

Under this code residence based taxation is applied for residents and source based taxation for non-residents. A resident according to this code shall be chargeable to tax on his world income and on the other side for non residents in India is chargeable to tax only in respect of accruals and receipts and deemed accruals and receipts in India.

<b>Nature of Income</b>	<b>Resident</b>	<b>Non-resident</b>
Accrues, or is deemed to accrue, to him in India	Taxable	Taxable
Accrues to him outside India	Taxable	Not Taxable
Received, or is deemed to be received, by him, or on his behalf, in India	Taxable	Taxable
Received by him, or on his behalf, outside India.	Taxable	Not Taxable

### **Residential Status**

- The residential status of a person is to be ascertained for each financial year in order to determine the scope of total income under Clause 3.
- Residential status is not determined on the basis of nationality or citizenship but on the basis of stay in India for specified period as per the provisions of this Act.

- An individual will be treated as a person of India Origin if either he or either of his parents or any of his grand-parents was born in undivided India.

**“Residence in India- Clause 4**

(1) An individual shall be resident in India in any financial year, if he is in India-

(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 -

(i) sixty days, or more, in that year, and

(ii) three hundred and sixty-five days, or more, within the four years

immediately preceding that year.

(2) The provisions of clause (b) of sub-section (1) shall not apply in respect of an

individual who is-

(a) a citizen of India, or a person of Indian origin, living outside India and who

visits India in that year;

(b) a citizen of India and who leaves India in that year as a member of the crew of

an Indian ship; or

(c) a citizen of India and who leaves India in that year for the purposes of

employment outside India.

(3) A company shall be resident in India in any financial year, if-

(a) it is an Indian company; or

(b) its place of control and management, at any time in the year, is situated wholly,

or partly, in India.

## Draft Direct Taxes Code Bill 2009

(4) However, every other person shall be resident in India in any financial year, if the place of control and management of its affairs, at any time in the year, is situated wholly, or partly, in India.”

Person	Test for residency
Individual	If he stays in India during financial year for atleast 182 days or If he stays in India during financial year for atleast 60 days and stays in India for atleast 365 during 4 years immediately preceding the financial year***
HUF	A HUF is said to be resident in India if control and management of its affairs is wholly or partly situated in India.
Firm, AOP and Others	A Firm, AOP or other person is said to be a resident in India if control and management is wholly situated in India.
Company	A Company is said to be a resident in India if it is an Indian Company or if control and management is wholly situated in India.

\*\*\* - This condition shall not be considered if an Individual falls in any one of the category mentioned in Clause 4(2).

Under this code the concept of “resident but not ordinarily resident” for an individual and a HUF will be replaced by providing exemption to the income of individual sourced outside India and not derived from a business controlled or a profession set up in India. This exemption is available to the Individual in the financial year in which the individual become resident and in the immediately succeeding financial year, if such individual was a non-resident for nine years immediately preceding the financial year in which he becomes resident.

### Residential Status

#### Illustration under different situations

1. Mr.X a citizen of Singapore provides the following details regarding his stay in India.

Financial Year	No. of Days Stayed
2010-11	220

2009-10	65
2008-09	125
2007-08	175
2006-07	10

**Determination of Residential Status of Mr.X**

According to Sec 4 of this Code, a person is said to be a resident if he satisfies any of the following conditions:

- Stay in India for at least 182 days in the financial year or
- Stay in India for at least 60 days in the financial year and stay of at least 182 days in four years immediately preceding the financial year.

In this case the first basic condition stay in India for at least 182 days is satisfied, hence he is a resident as per Sec 4.

2. If in the above Illustration 1 if stay in India during the year 2010-11 is for 75 days. Determine the residential Status

Mr. X is still a resident hence he satisfies the second condition. i.e., stay in India more than 60 days in the financial year and more than 365 days in 4 years immediately preceding financial year.

3. If in the above Illustration 1 if stay in India during the year 2010-11 is for 75 days and 2007-08 is 150 days. Determine the residential Status

4.

Mr. X is a non resident in this case, hence he fails to satisfy the second condition i.e., Though he stays for more than 60 days in the financial year , he stays less than 365 days in 4 years immediately preceding the financial year. He stays for only 350 days during 4 years immediately preceding the financial year, and thus Mr. X is a non resident.

5. Mr .A , an Indian citizen leaves India for the first time on 01<sup>st</sup> Sep 2010 to Dubai for the purpose of employment. Determine his residential status.

The above situation is covered by Sec4 (2) which states that the first basic condition in Sec 4(1) shall only be applicable. i.e., If he stays for atleast 182 days in the financial year he shall be a resident.

In this case Mr.A stays for 154 days and therefore he is a non – resident. The second condition in Sec 4(1) should not be applied for test for residency.

6. Mr. B a person of individual origin visits India on 01<sup>st</sup> June 2010 and stays throughout the financial year. Determine the residential status.

As per Sec4 (2) in determining the residential status of a person of Indian origin , the first condition in Sec4(1) alone be applicable.

In this case Mr.B a person of Indian origin visits India on 1<sup>st</sup> June 2010 and stays throughout the year . His stay is for 304 days. Hence he is a resident as per Sec 4(1) of this code.

*Note:*

*While computing the number of days of stay in India, the date of arrival and date of departure shall also be included as stay in India.*

### **Income of other persons included in Assesse's total Income**

Generally, an assessee is taxed for the income that he earns. In some cases however the Law deviates from the principle and the assessee may be taxed for income, which legally belongs to somebody else. These are enumerated under Clause 7 and Clause 8 of the Draft Direct Tax Code Bill 2009 (called as Clubbing Provisions). These are provisions where the government would like to make people pay tax on those adjustments that they make for evading the same . This is done by transferring the income of that person to some other close relative of the real earner for reducing or nullifying the tax liability and indirectly also enjoying the benefits of such income.



When income alone is transferred without transfer of the asset giving rise to such income, it is deemed to be the income of transferor. It does not matter that whether such transfer is revocable or irrevocable. All income arising to any person by virtue of a revocable transfer of assets shall be included in the total income of transferor and taxed accordingly.

### **Exceptions to Clubbing Provisions**

If the transfer is by way of trust and transfer is not revocable for a period of lifetime of beneficiary or transferee. However the transfer should not derive any direct or indirect benefit from such income in either case.

### **Total income to include income of any other person – Clause 7**

(1) The total income of any person shall include the following income of any other person:-

- (a) any income transferred, whether revocable or not, to any other person without transferring the asset from which the income accrues;
- (b) any income accruing from an asset transferred to any trust, if the transfer is revocable during the life time of the beneficiary of the trust; and
- (c) any income accruing from an asset transferred to any other person, not being a trust, if the transfer is revocable during the lifetime of such other person.

(2) For the purpose of this section,-

- (a) a transfer shall be deemed to be revocable if -
  - (i) it contains any provision for the re-transfer, directly or indirectly, of the whole or any part of the income or assets to the transferor; or
  - (ii) it, in any way, gives the transferor a right to re-assume power, directly or indirectly, over the whole or any part of the income or assets;
- (b) a transfer shall include any settlement, trust, covenant, agreement or arrangement.

### **Case Law under Income Tax Act 1961 (Sec 60)**

An assessee is the owner of a factory, enters into an agreement to sell the factory. The agreement carries a provision that profit derives from factory would be for the benefit of transferee. However, the actual transfer of factory has taken place two years from the date of agreement. Department contested that the profits derived in the intervening period between the date of sale of agreement and the actual date of transfer shall be clubbed in the hands of assessee. The Supreme Court in the case of Dalmia Cements Ltd Vs CIT – 1999 237 ITR 617, has held that

the very existence of agreement to transfer has ruled out and totally excluded the application of Sec 60 and therefore clubbing cannot be applied.

**Total income to include income of spouse, minor child, etc. – Clause 8**

(1) The total income of any individual shall include,-

(a) all income which accrues, directly or indirectly,-

(i) to the spouse, by way of salary, commission, fees or any other form of remuneration, from a concern in which the individual has a substantial interest other than any income solely attributable to the application of the technical or professional knowledge and experience of the spouse;

(ii) from assets transferred, directly or indirectly, to the spouse by the individual, otherwise than for adequate consideration, or in connection with an agreement to live apart; and

(iii) from assets transferred, directly or indirectly, to any other person by the individual otherwise than for adequate consideration, to the extent to which the income from such assets is for the immediate or deferred benefit of the spouse;

(b) all income which accrues to a minor child (other than a minor child being a person with disability or person with severe disability) of the individual, other than income which accrues to the child on account of any-

(i) manual work done by the child; or

(ii) activity involving application of the skill, talent or specialised knowledge and experience of the child;

(c) all income derived from any converted property or part thereof;

(d) all income derived from any converted property which is received by the spouse or minor child upon partition of the Hindu undivided family of which the individual is a member.

(2) The income referred to in sub-clause (i) of clause (a) of sub-section (1) shall, regardless of anything contained therein, be included in the total income of the spouse whose total income (excluding the income referred to in that sub-clause) is higher.

(3) The Board may prescribe the method for determining the income referred to in sub-clause (ii) of clause (a) of sub-section (1).

(4) The income referred to in clause (b) of sub-section (1) shall be included in the total income of-

- (a) the parent who is the guardian of the minor child, if the other parent is not a guardian;  
or  
(b) the parent whose total income (excluding the income referred to in that clause) is higher, if both the parents are guardians of the child;

**Points to be noted:**

1. If the asset transferred by an individual who transfers otherwise than for adequate consideration any house property to his or her spouse, not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter then this Sec will not apply but Clause 284 (189) will apply and subsequently the transferor shall be owner of the property and income shall be accordingly computed under the head “Income from House Property”.
2. ‘Child’ in relation to an individual, includes a step-child and a adopted child of an Individual –Clause 284(52).
3. Clause 8(1)(b) does not include minor married daughter , even income arising to minor married daughter to be clubbed.
4. Though the income derived by minor out of his own skill and expertise cannot be clubbed, any interest earned on investing made out of such income shall be clubbed.
5. In the case parents are non-residents and minor child is resident , the provisions of Clause 8 does not apply. In such a case minor shall be chargeable to tax.
6. If minor is deriving agricultural income, clubbing of such income with the parent’s total income for rate purposes is not required.
7. Where both the parent does not have any income, it is unable to ascertain whose income is greater . In such a case clubbing does not arise.
8. Income for clubbing purposes includes Losses.
9. For the purposes of clubbing it is not essential that assessee’s own income excluding such income to be clubbed exceeds taxable limit.

**Persons not liable to Income Tax – Clause 10**

The persons specified in the Seventh Schedule shall not be liable to income-tax under Clause 3 of this Code.

**List of Persons under Seventh Schedule not liable to income Tax**

1. Any office, or establishment, of the Central Government or the Government of a State;
2. The Coffee Board.
3. The Rubber Board.
4. The Tea Board.
5. The Tobacco Board.
6. The Marine Products Export Development Authority.
7. The Agricultural and Processed Food Products Export Development Authority.
8. The Spices Board.
9. The Prime Minister’s National Relief Fund.
10. The Prime Minister’s Fund (Promotion of Folk Art).
11. The Prime Minister’s Aid to Students Fund.
12. The National Foundation for Communal Harmony.
13. The Secretariat of the Asian Organisation of the Supreme Audit Institutions registered as “ASOSAI-SECRETARIAT” under the Societies Registration Act, 1860 (21 of 1860) upto the financial year ending on the 31st day of March, 2008.
14. The Insurance Regulatory and Development Authority.
15. A Mutual Fund.
16. A venture capital company.
17. A venture capital fund.
18. New Pension System Trust.
19. Any approved provident fund.
20. Any approved superannuation fund.
21. Any approved gratuity fund.
22. The Deposit-linked Insurance Fund established under,-
  - (a) the Coal Mines Provident Funds and Miscellaneous Provisions Act, 1948;
  - (b) the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952;

23. The Employees' State Insurance Fund set up under the Employees' State Insurance Act, 1948.
24. Any electoral trust, if-
- (a) ninety five percent of the aggregate of all donations received by it during the financial year and the surplus, if any, brought forward from any preceeding financial year is distributed to political parties; and
  - (b) such electoral trust functions in accordance with the rules made by the Central Government.
25. A corporation established by a Central, State or Provincial Act or of any other body, institution or association (being a body, institution or association wholly financed by Government) where such corporation or other body or institution or association has been established or formed for promoting the interests of the members of the Scheduled Castes or the Scheduled Tribes or backward classes or of any two or all of them.
26. Any body, institution or association wholly financed by Government and formed for promoting the interest of the members of the Scheduled Castes or the Scheduled Tribes or Backward classes.
27. Any corporation established by the Central or State Government for promoting the interests of the members of a minority community.
28. Any statutory corporation established for the welfare and economic upliftment of ex-servicemen being the citizens of India.
29. Any co-operative society formed for promoting the interests of the members of the Scheduled Castes or Scheduled Tribes if,-
- (a) the membership of the co-operative society consists of only other co-operative societies formed for similar purposes; and
  - (b) the finances of the society are provided by the Government and such other societies.
30. Panchayat as referred to in clause (d) of article 243 of the Constitution
31. Municipality as referred to in clause (e) of article 243P of the Constitution
32. Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund
33. Cantonment Board as defined in section 3 of the Cantonments Act, 1924;

34. Any Regimental Fund or Non-Public Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants.

35. Any fund set up, on or after 1st day of August, 1996, by an insurer under a pension scheme,-

(a) to which contribution is made by any person for the purpose of receiving pension from such fund; and

(b) which is approved by the Controller of Insurance or the Insurance Regulatory and Development Authority.

36. An authority (whether known as the Khadi and Village Industries Board or by any other name) established in a State by or under a State or Provincial Act for the development of khadi or village industries in the State.

37. Any body or authority (whether or not a body corporate or corporation sole) established, constituted or appointed by or under any Central, State or Provincial Act which provides for the administration of any one or more of the following,

(a) public religious or charitable trusts or

(b) endowments (including maths, temples, gurdwaras, wakfs, churches, synagogues, agiaries or other places of public religious worship); or

(c) societies for religious or charitable purposes registered as such under the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force.

38. Any association, authority, body, institution or trust registered under any law of the Central, State or Provincial Government for the regulation of religious endowments.

39. The SAARC Fund for Regional Projects set up by Colombo Declaration.

40. Any income of the nature, and to the extent, notified by the Central Government, arising to a body or authority which -

(a) has been established or constituted or appointed under a treaty or an agreement entered into by the Central Government with two or more countries or a convention signed by the Central Government.

(b) is established or constituted or appointed not for the purposes of profit; (c) is notified by the Central Government in the Official Gazette for the purposes of this clause.

41. The Central Electricity Regulatory Commission constituted under sub-section (1) of section 76 of the Electricity Act, 2003.

### **Interpretation – Clause 11**

For the purposes of this Chapter, unless otherwise stated, reference to any accrual, receipt, expenditure, withdrawal, asset or liability shall be presumed to be always in relation to -

(a) the financial year in respect of which the income is computed; and

(b) the person in respect of whom the income is computed.

## **Classification of Income**

### **Classification of sources of income – Clause 12**

For the purposes of computation of total income of any person for any financial year, income from all sources shall be classified under the following :

- A. Income from special sources
- B. Income from ordinary sources

### **Computation of income from special sources – Clause 13**

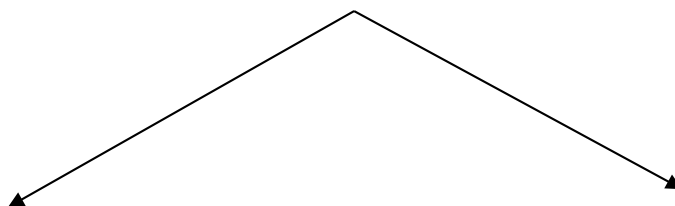
- (1) Every item listed in the Table in rule 3 of the First Schedule shall be a special source.
- (2) The income accruing from any special source shall be computed under the class ‘income from special sources’ in accordance with the provisions of the Ninth Schedule.

### **Computation of income from ordinary sources – Clause 14**

- (1) The income accruing from a source, other than the special sources, shall be computed under the class ‘income from ordinary sources’.
- (2) For the purposes of computation under sub-section (1), all income accruing from a source, other than the special sources, shall be classified under the following heads of income:-
  - A. Income from employment.
  - B. Income from house property.
  - C. Income from business.
  - D. Capital gains.
  - E. Income from residuary sources.

## **Classification of Income**

**(Clause 12)**



Income from Special Sources

(Clause 13)



- Non-resident**
- Interest on Investments
- Dividend received
- Capital Gains
- Royalty for Tech. Services
- Non-resident Sportsmen**
- Winnings from games
- Advertisement, Journals, articles
- Non-resident Sports Association**
- Guarantee money
- All assessee**
- Lottery , puzzles, Horse Races
- Card games, Gambling etc.,

Income from Ordinary Sources

(Clause 14)



- Income from Employment
- Income from house property
- Income from business
- Capital Gains
- Residuary Sources

**“Apportionment of income between spouses governed by Portuguese Civil Code- Clause 15**

(1) The income of the husband and wife, governed by the communiao dos bens, under each special source shall be apportioned equally between the spouses.

(2) The income of the husband and wife, governed by the communiao dos bens, under each head of income (other than that under the head ‘Income from employment’) shall be apportioned equally between the spouses.

(3) The income so apportioned under sub-sections (1) and (2) shall be included separately in the total income of the spouses, respectively.



(4) The income under the head "Income from employment" shall be included in the total income of the spouse who has actually earned it.”

In the case of persons who are residing in the state of Goa, and in the Union Territories of Dadra and Nagar Haveli which are governed by Portuguese Civil Code, the income from all other sources except Income from employment shall be apportioned equally between husband and wife to be included in their respective total income. Income under head Employment will be included separately in the total income of husband or wife who has actually earned it.

## **Income from Employment**

### **Chapter Outline**

<b>S.No</b>	<b>Description</b>	<b>Clause</b>
1	Chargeability	19
2	Computation of Employment income	20
3	Scope of Employment Income	21
4	Deductions from Employment Income	22

### **Employer - Clause 284(96)**

“**Employer**” means an entity which controls and directs an individual under an express or implied contract of employment and is obligated to pay compensation to him;

### **Points to be noted**

1. There must be employer employee relationship either in present or in the past between person liable to pay the amount and the person entitled to receive the amount. If such a relationship does not exist income falls outside the scope of head “Income from Employment”.

2. If a person is a agent for his principal during the course of carrying on any business, there is no relationship between them as master and servant and therefore any remuneration earned by agent is chargeable under Income from business.
3. In the case of director of a company the employer employee relationship can be brought only on execution of an agreement of service.
4. CBDT clarification under Income Tax Act states that salaries of MPs and MLAs are charged under Income from other sources.
5. Salary is chargeable to tax either on due or on receipt basis whichever is earlier. Salary due on the financial year is taxable as well as advance salary received during the financial year is also taxable.
6. Salary received by a member of Unincorporated body (firms, AoPs) by whatever name called shall not be treated as salary. It will be chargeable under Income from business.

#### **Income from Employment – Clause 19**

The income derived by a person from any employment shall be computed under the head “Income from employment”.

#### **Computation of income from Employment – Clause 20**

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 clausetion 22.

#### **Scope of gross salary – Clause 21**

The gross salary shall be the amount of salary due or paid (including arrears or advance) to a person, by or on behalf of his employer or former employer, in the financial year.

#### **Deductions from gross salary – Clause 22**

- (1) The deductions for the purposes of clause 20 shall be the following: -
  - (a) any sum paid on account of a tax on employment within the meaning of clause (2) of Article 276 of the Constitution;
  - (b) the amount received from his employer for journey by the person between his residence and office or any other place of work, to the extent prescribed;

(c) any such special allowance or benefit specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, as may be prescribed, to the extent to which such expenses are actually incurred for that purpose;

(d) the amount due or received, directly or indirectly, from his employer, in connection with his voluntary retirement or termination of service or voluntary separation under any scheme framed for this purpose in accordance with such guidelines as may be prescribed;

(e) the amount of any gratuity received from one or more of his employers, subject to limits as may be prescribed, if the amount is received -

(i) on his retirement, or on his becoming incapacitated prior to such retirement, or on termination of his employment; or

(ii) by the spouse, children or dependants on the death of the person.

(f) the amount of any death-cum-retirement gratuity received under the Payment of Gratuity Act, 1972 or from the Central Government, State Government, local authority or any public sector company;

(g) the amount received in commutation of pension under a scheme of his employer, framed in accordance with the prescribed rules, to the extent of -

(i) one-third of the pension, in a case where he receives any gratuity; and

(ii) one-half of such pension, in any other case; and

(h) the amount of any pension received by an individual who has been in the service of the Central Government or State Government and has been awarded “Param Vir Chakra” or “Maha Vir Chakra” or “Vir Chakra” or such other gallantry award as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) The deduction under clauses (d) to (g) of sub-section (1) shall be allowed if the amounts referred to therein is paid to, or deposited in, a Retirement Benefits Account maintained with any permitted savings intermediary in accordance with the scheme framed and prescribed by the Central Government in this behalf.

Under Clause 22 of this code only the following are allowed as deduction . Medical reimbursement, perquisites like LTA, Leave encashment will no longer be deductible, but included in the salary component, as the slab is increased.

### **Professional Tax**

## Draft Direct Taxes Code Bill 2009

Deduction is allowed in respect of any sum paid by the assessee on account of a tax on employment within the meaning of Article 276(2) of the Constitution of India, leviable by or under any law. In case, if professional tax is paid by employer on behalf of employee the amount so paid should be included in Gross Salary and then deducted under Clause 22(1)(a).

### Transport Allowance

Amount received from his employer for journey by the person between his residence and office or any other place of work, to the extent prescribed - Currently Rs.800 per month

### Special Allowance

Any such special allowance or benefit specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, as may be prescribed, to the extent to which such expenses are actually incurred for that purpose.

With respect to Income Tax Act 1961 , the following allowances are prescribed by CBDT under Income Tax Rules as exempt – Rules 2BB

TABLE

<i>Sl. No.</i>	<i>Name of allowance</i>	<i>Place at which allowance</i>	<i>Extent to which allowance is exempt</i>
(1)	(2)	(3)	(4)
1.	Any Special Compensatory Allowance in the nature of [Special Compensatory (Hilly Areas) Allowance] or High Altitude Allowance or Uncongenial Climate Allowance or Snow Bound Area Allowance or Avalanche Allowance	I. (a) Manipur Mollan/RH-2365. (b) Arunachal Pradesh (i) ameng; (ii) North Eastern Arunachal Pradesh where heights are 9,000 ft. and above; (iii) Areas east or west of Siang and Subansiri sectors (c) Sikkim (i) Area North-NE-East of line	[Rs. 800] per month

Chhaten LR 0105,  
Launchung LR 1902, pt.  
4326 LW 1790, pt. 4349  
LW 1479, pt. 3601 LW  
1471 to mile 13 LW 1367  
to Berluk LW 2253.

(ii) All other areas at 9,000 ft.  
and above.

(d) Uttar Pradesh

Areas of Harsil, Mana and  
Malari Sub-divisions and  
other areas of heights at  
9,000 ft. and above.

(e) Himachal Pradesh

(i) All areas at 9,000 ft. and  
above ahead of line  
joining Puhka-  
jakunzomla towards the  
bower.

(ii) Area ahead of line joining  
Karchham and Shigrila  
towards the bower.

(iii) All areas in Kalpa, Spiti,  
Lahul and Tisa.

(f) Jammu and Kashmir

(i) All areas from NR 396950  
to NR 350850, NR  
370790, NR 311776  
North of Shaikhra  
Village, North of Pindi  
Village to NR 240800.

(ii) Areas of Doda, Sank and  
other posts located in  
areas at a height of 9,000  
ft. and above.

(iii) North of line Kud-Dudu  
and Bastt-garh, Bilwar,  
Batote and Patnitop.

(iv) All areas ahead of Zojila  
served by Road Srinagar-  
Zojila-Leh in Leh  
District.

(v) Gulmarg - All areas  
forward of line joining  
Anita Linyan 3309 -  
Kaunrali - 2407.

		<p>(vi) Uri South - All areas forward of Kaunrali - Kandi 1810 Kustam 1505 - Sebasantra 1006 Changez 0507 - Jak 19904 Keekar 9704 Jamun 9607 Neeta 9508.</p> <p>(vii) BAAZ Kaiyan Bowl - All areas forward of Dulurja 9712-BAAZ 0317 - Shamsheer 0416 including New Shamsheer 0615 - Zorawar 1017 - Malaugan Base 1027 - Radha 0836 to Nastachun Pass 9847.</p> <p>(viii) Tangdhar - All areas west of Nastachun Pass Tangdhar Bowl and on Shamsheer Range and forward of it.</p> <p>(ix) Karan and Machhal sub-sectors - All areas along the line Pharkiangali 0869 to Z Gali 4376 and forward of Shamsheer Range.</p> <p>(x) Panzgam, Trehgam and Drugmul.</p> <p><b>II.</b> Siachen area of Jammu and Kashmir</p> <p><b>III.</b> All places located at a height of 1,000 metres or more above the sea level, other than places specified at (I) and (II) above.</p> <p><b>I.(a)</b> Little Andaman, Nicobar and Narcondum Islands;</p> <p><b>(b)</b> North and Middle Andamans;</p> <p><b>(c)</b> Throughout Lakshadweep and Minicoy Islands;</p> <p><b>(d)</b> All places on or north of the following demarcation line: Point 14600 (2881) to Sala MS 2686-Matau MS 6777 - Sakong MT 1379-Bamong-Khonawa MO 2803 - Nyapin</p>	<p>[Rs. 7,000] per month</p> <p>[Rs. 300] per month</p> <p>Rs. 1,300 per month</p>
<p>[2.</p>	<p>Any Special Compensatory Allowance in the nature of Border Area Allowance, Remote Locality Allowance or Difficult Area Allowance or Disturbed Area Allowance</p>		

MO 7525 - River Khru to its junction with the river Kamla  
MP - 2226 - Taliha - Yapuik  
MK 7410 - Gshong MK 9749  
- Yinki Yong NF 4324-  
Damoroh MF 6208 -  
Ahinkolin NF 8811 - Kronli  
MG 2407 - Hanli NM 4096 -  
Gurongon NM 4592-Loon  
NM 7579 - Mayuliang NM  
0169-Chawah NM 9943 -  
Kamphu NM 1125 - Point  
6490 (NM 1493) Vijayanagar  
NSA 486;

(e) Following areas in Himachal Pradesh :

(i) Pangi Tehsil of Chamba District;

(ii) Following Pancha-yats and villages of Bharmour Tehsil of Chamba District :

(A) Panchayat : Badgaun, Bajol, Deol Kugti Nayagam and Tundah.

(B) Villages :

Ghatu of Gram Panchayat Jagat Kanarsi of Gram Pan-chayat, Cauhata.

(iii) Lahaul and Spiti District;

(iv) Kinnaur district:

(A) Asrang, Chitkul and Hango Kuno Charang Panchayats;

(B) 15/20 Area comprising the Gram Pancha-yats of Chhota Khamba, Na-thpa and Rup;

(C) Pooh sub-Division excluding the Panchayat Areas

specified above.

- (v) 15/20 Area of Rampur Tehsil comprising of Panchayats of Koot, Labana-Sadana, Sarpara and Chandi Branda of Shimla District.
- (vi) 15/20 Area of Nirmand Tehsil, comprising the Gram Panchayats of Kharga, Kushwar and Sarga of Kullu District.
- (f) Chimpluipui District of Mizoram and areas beyond 25 km. from Lunglei town in Lunglei District of Mizoram.
- (g) Following areas in Jammu and Kashmir:
  - (i) Niabat Bani, Lohi, Malhar and Macchodi of Kathua District;
  - (ii) Dudu Basantgarh Lander Bhamag Illaqa, Thakrakote and Nagote of Udhampur District;
  - (iii) All areas in Tehsil Mahore except those specified at III(f)(i) below in Udhampur District;
  - (iv) Illaqa of Padder and Niabat Nowgaon in Kishtwar Tehsil of Doda District;
  - (v) Leh District;
  - (vi) Entire Gurez - Niabat, Tangdhar Sub-Division and Keran Illaqa of Baramulla District.
- (h) Following areas of Uttar Pradesh :
  - (i) Chamoli District;
  - (ii) Pithoragarh District;
  - (iii) Uttarkashi District.
- (i) Throughout Sikkim State.



<p><b>II.</b> Installations in the Continental Shelf of India and the Exclusive Economic Zone of India.</p>	<p>Rs. 1,100 per month</p>
<p><b>III.</b> (a) Throughout Arunachal Pradesh other than areas covered by those specified at I(d) above.          (b) Throughout Nagaland State.          (c) South Andaman (including Port Blair).          (d) Throughout Lunglei District (excluding areas beyond 25 km. from Lunglei town) of Mizoram.          (e) Dharmanagar, Kailasahar, Amarpur and Khowai in Tripura.          (f) Following areas in Jammu and Kashmir :              (i) Areas up to Goel from Kamban side and areas upto Arnas from Keasi side in Tehsil Mahore of Udhampur District;              (ii) Matchill in Baramulla District.          (g) Following areas in Himachal Pradesh :              (i) Bharmour Tehsil, excluding Panchayats and villages covered by those specified at I(e)(ii) above of Chamba District;              (ii) Chhota Bhangal and Bara Bhangal area of Kangra District;              (iii) Kinnaur District other than areas specified at I(e)(iv);              (iv) Dodra - Kawar Tehsil, Gram Panchayats of Darkali in Rampur, Kashapath Tehsil and Munish, Ghori Chaibis of Pargana Sarahan of Shimla District.</p>	<p>Rs. 1,050 per month</p>
<p><b>IV.</b> (a) Throughout Aizawal District of</p>	<p>-Rs. 750 per</p>

		<p>Mizoram;</p> <p>(b) Throughout Tripura except areas those specified at III(e);</p> <p>(c) Throughout Manipur;</p> <p>(d) Following areas of Himachal Pradesh :</p> <p>(i) Jhandru Panchayat in Bhatiyat Tehsil, Churah Tehsil, Dalhousie Town (including Banikhet proper) of Chamba District;</p> <p>(ii) Outer Seraj (excluding Village of Jakat-Khana and Burow in Nirmand Tehsil of Kullu District;</p> <p>(iii) Following areas of Mandi District :</p> <p>(A) Chhuhar Val-ley (Joginder-nagar Tehsil);</p> <p>(B) Bagra, Ch-hatri, Chhot-dhar, Garagushain, Gatoo, Gharyas, Jan-jehli, Jaryar, Johar, Kalhani Kalwan, Kho-lanal, Loth, Silibagi, Soma-chan, Thach-dhar, Tachi and Thana Panchayats of Thunag Tehsil;</p> <p>(C) Binga, Kam-lah, Saklana, Tanyar and Tarakholah, Panchayats of Dharampur Block;</p> <p>(D) Balidhar, Bag-ra, Gopalpur, Khajol, Mahog, Mehudi, Manj, Pekhi, Sainj, Sarahan and Teban, Pan-chayats of Karsog Tehsil;</p> <p>(E) Bohi, Batwara,</p>	month
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Dhanyara, Paura-Kothi, Seri and Shoja, Panchayats of Sundernagar Tehsil.

(iv) Following areas and offices of Kangra District :

(A) Dharamshala town and Womens ITI; Dari, Mechanical Workshop, Ramnagar; Child Welfare and Town Country Planning Offices, Sakoh; CRSF Office at lower Sakoh; Kangra Milk Supply Scheme, Shamnagar; Tea Factory, Dari; Forest Corporation Office, Sham-nagar; Tea Factory, Dari; Settlement Office, Shamnagar and Binwa Project, Sham-nagar. Offices located outside the Municipal limit of Dharamshala town but included in Dharamshala town for purposes of eligibility to special Compensatory (Remote Locality) Allowance;

(B) Palampur town, including HPKVV Campus at Palampur and H.P. Krishi Vishvavidya-laya Campus; Cattle Development Office/ Jersey Farm, Banuri; Sericulture Office/Indo-German Agriculture Workshop/HPPWD

Division, Bundla;  
Electrical Sub-  
Division, Lohna;  
D.P.O. Corporation,  
Bundla and  
Electrical HPSEE  
Division, Ghuggar  
offices located  
outside the  
Municipal limits of  
Palam-pur town but  
included in  
Palampur town for  
the purpose of above  
allowance;

(v) Chopal Tehsil; Ghoris,  
Panjgaon, Patsnu, Naubis  
and Teen Koti of Pargana  
Sarahan; Deothi Gram  
Pancha-yat of Taklesh  
Area; Pargana Barabis;  
Kasba Rampur and Ghori  
Nog of Pargana Rampur  
of Rampur Tehsil of  
Shimla District and  
Shimla Town and its  
suburbs (Dhalli, Jatog,  
Kasumpti, Mashobra,  
Taradevi and Tutu);

(vi) Panchayats of Bani,  
Bakhali (Pachhad  
Tehsil), Bharog Bhe-neri  
(Paonata Tehsil), Birla  
(Nahan Tehsil), Dibber  
(Pachhad Tehsil) of  
Thanan Kasoga (Nahan  
Tehsil) in Sirmour  
District and Transgiri  
Tract of Sirmour District;

(vii) Mangal Panchayat of  
Solan District;

(e) Following areas in Jammu and  
Kashmir :

(i) Areas in Poonch and  
Rajouri Districts  
excluding the towns of  
Poonch and Rajouri and  
Sunderbani and other

		Urban areas in the two districts; (f) Following areas in Jammu and Kashmir : Areas not included in I(g), III(f) and IV(e) above, but which are within a distance of 8 km. from the line of actual control or at places which may be declared as qualifying for Border Allowance from time to time by the State Government for their own staff.	
		V. Jog Falls in Shimoga District in Karnataka	Rs. 300 per month.
		VI. (a) Throughout the State of Himachal Pradesh other than areas covered by those specified in I(e), III(g) and IV(d) (b) Throughout the State of Assam and Meghalaya	Rs. 200 per month.
3.	[Special Compensatory (Tribal Areas/Schedule Areas/Agency Areas) Allowance]	(a) Madhya Pradesh (b) Tamil Nadu (c) Uttar Pradesh (d) Karnataka (e) Tripura (f) Assam (g) West Bengal (h) Bihar (i) Orissa	[Rs. 200] per month.
4.	Any allowance granted to an employee working in any transport system to meet his personal expenditure during his duty performed in the course of running of such transport from one place to another place, provided that such employee is not in receipt of daily allowance	Whole of India	70 per cent of such allowance up to a maximum of [Rs. 6,000] per month.
5.	Children Education Allowance	Whole of India	[Rs. 100] per month per child up to a maximum of

6.	Any allowance granted to an employee to meet the hostel expenditure on his child	Whole of India	two children. [Rs. 300] per month per child up to a maximum of two children.
7.	Compensatory Field Area Allowance	<p>(a) Following areas in Arunachal Pradesh :</p> <p>(i) Tirap and Changlang Districts;</p> <p>(ii) All areas North of line joining point 4448 in LZ 4179-Nukme Dong MS 3272-Sepala MT 2969- Palin MO 9213-Daporijo NR 5841-Along NL 1273-Hunli NM 3196-Tidding Tuwi MT 6369-Hayuliang NN 0170-Tawaken MT 8136-Champai Bun NM 8814, all inclusive.</p> <p>(b) Throughout Manipur and Nagaland.</p> <p>(c) Following areas in Sikkim :</p> <p>All areas North and North East of line joining Phalut LV 4750-Gezing LV 7059-Mangkha LV 6160-Penlang La LW 0666-Rangli LW 1448-BP 1 in LW 2453 on Indo-Bhutan Border, all inclusive.</p> <p>(d) Following areas in Himachal Pradesh :</p> <p>All areas East of line joining Umasila NV 3951-Udaipur NY 8663-Manikaran SB 2300-Pir Parbati Pass TA 1459-Taranda TA 2335-Barasua Pass TA 8801, all inclusive.</p> <p>(e) Following areas in Uttar Pradesh :</p> <p>All areas North and North-East of line joining Barasua Pass Gangnani TG 1362-Govind Ghat TG 0937-Tapovan TH 1822-Musiari TN 8982-Relagad TO 2466, all inclusive.</p> <p>(f) Following areas in Jammu and</p>	[Rs. 2,600] per month.

Kashmir :

- (i) Areas North and East of line joining Zojila MU 3036-Baralachala NE 6672 along the Great Himalayan Range, all inclusive;
- (ii) All areas West of line joining point 1556 in NR 5470-Gulmarg MT 3105-Naushara MY 3105-Ringapat MT 2133-Handwara MT 2043-Laingyal MT 2339-Point 8405 in NG 4565-North of line joining point 8403-Bunakut MT 5453-Razan NN 2239-Zojila, all inclusive;
- (iii) All areas West of line joining tip of Chicken Neck RD 7073-Canal junction RD 6364-Mawa Brahmana RD 6183-Chauki RD 6393- Road junction RD 6499-Baramgala MY 3854-Point 1556 in NR 5470, all inclusive.

(f) Following areas in Jammu and Kashmir :

- (i) Areas North and East of line joining Zojila MU 3036-Baralachala NE 6672 along the Great Himalayan Range, all inclusive;
- (ii) All areas West of line joining point 1556 in NR 5470-Gulmarg MT 3105-Naushara MY 3105-Ringapat MT 2133-Handwara MT 2043-Laingyal MT 2339-Point 8405 in NG 4565-North of line joining point 8403-Bunakut MT 5453-Razan NN 2239-Zojila,

		<p>all inclusive;</p> <p>(iii) All areas West of line joining tip of Chicken Neck RD 7073-Canal junction RD 6364-Mawa Brahmana RD 6183-Chauki RD 6393- Road junction RD 6499-Baramgala MY 3854-Point 1556 in NR 5470, all inclusive.</p> <p>(a) Following areas in Punjab and Rajasthan :</p> <p>Areas West of line joining Jessai, Barmer, Jaisalmer, Pokharan, Udasar, Mahajan Ranges, Suratgarh, Lalgarrh, Jattan, Abohar, Govindgarh, Fazilka, Jandiala Guru, Moga, Dholewal, Deas, Bir Sarangwal, Hussainiwala, Dera Baba Nanak, Laisain pulge upto the international border, all inclusive.</p> <p>(b) Following area in Haryana : Satrod (Hissar).</p> <p>(c) Following areas in Himachal Pradesh :</p> <p>Areas North of line joining Narkhanda, Keylong upto Field Area line/High Altitude line.</p> <p>(d) Following areas in Arunachal Pradesh and Assam :</p> <p>(i) Cachar and North Cachar Districts of Assam including Sil- char;</p> <p>(ii) All areas of Arunachal Pradesh and Assam North of river Brahmaputra except Tejpur - Misamari and Field Areas.</p> <p>(e) Throughout Mizoram and Tripura.</p> <p>(f) Following areas in Sikkim and West Bengal :</p>	<p>[Rs. 1,000 ] per month</p>
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		<p>Areas Northwards of line joining Sevoke LV 9112-Burdong LV 985-Sherwani LV 9453 -Bagrakot LW 0113-Damdim LW 1109-New Mal-Hasimara-QB 7894 Ganga Ram Tea Estate QA 1377 upto the High Altitude line/field area line/inter- national border, all inclusive.</p> <p>(g) Following areas in Uttar Pradesh :</p> <p>Areas North of line joining Uttarkashi, Karan Prayag, Gauchar, Joshimath, Chamoli, Rudra Prayag, Askote, Char- amgad, Dharchula, Kausani and Narendra Nagar upto inter-national border, all inclusive.</p> <p>(h) Following areas in Jammu and Kashmir :</p> <p>(i) Areas West of line join- ing Pattan, Baramulla, Kupwara, Drugmula, Panges, Mankes, Buniyar, Pantha Chowk, Khanabal, Anantnag, Khundru and Khru upto the existing High altitude line, all inclusive;</p> <p>(ii) Areas West of line join- ing - BP-19, Brahmana- di-Bari, Jindra, Dhansal, Katra, Sanjhi Chatt, Batote, Patnitop, Ram- ban and Banihal upto the existing High alti- tude line, all inclusive.</p>	
<p>9.</p>	<p>Any special allowance in the nature of counter- insurgency allowance granted to the members of armed forces operating in areas away from their permanent locations [***]</p>	<p>Whole of India</p>	<p>[Rs. 3,900] per month.</p>
<p>[10.</p>	<p>Transport allowance granted to an employee [other than an employee referred to in serial number 11] to meet his expenditure</p>	<p>Whole of India</p>	<p>Rs. 800 per month.]</p>

**Draft Direct Taxes Code Bill 2009**

	for the purpose of commuting between the place of his residence and the place of his duty.		
[11.]	Transport allowance granted to an employee, who is blind or orthopaedically handicapped with disability of lower extremities, to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty	Whole of India	Rs. 1600 per month.]
[12.]	Underground Allowance granted to an employee who is working in uncongenial, unnatural climate in underground [***] mines	Whole of India	Rs. 800 per month.]
[13.]	Any special allowance in the nature of high altitude (uncongenial climate) allowance granted to the member of the armed forces operating in high altitude areas	(a) For altitude of 9,000 to 15,000 feet (b) For altitude above 15,000 feet	Rs. 1060 per month.] Rs. 1600 per month.]
14.	Any special allowance granted to the members of the armed forces in the nature of special compensatory highly active field area allowance	Whole of India	Rs. 4200 per month.]
[15.]	Any special allowance granted to the member of the armed forces in the nature of Island (duty) allowance	Andaman & Nicobar and Lakshadweep Group of Islands	Rs. 3250 per month.]

**Pension received by Ex- Servicemen**

The amount of any pension received by an individual who has been in the service of the Central Government or State Government and has been awarded “Param Vir Chakra” or “Maha Vir

Chakra” or “Vir Chakra” or such other gallantry award as the Central Government may, by notification in the Official Gazette, specify in this behalf.

**Gratuity, Voluntary Retirement, Commuted Pension**

Amount received in connection with voluntary retirement or termination of service or voluntary separation under scheme framed in according to guidelines prescribed.

Amount of any gratuity received from one or more employers on retirement or on becoming incapacitated prior to retirement or termination of employment, subject to limits prescribed.

Amount of any death-cum-retirement gratuity received under Payment of Gratuity Act, 1972 or from Central Government, State Government , local authority or public sector company.

Commuted Pension means a lump sum amount taken by commuting the pension or part of the pension. When the employee commutes pension , the remaining portion will be received for the period.

Uncommuted pension is wholly taxable for all assesses. However there is a deduction for commuted pension.

1. If the employee is in receipt of Gratuity ,one third of the amount of commuted pension which he would have received had he commuted the whole (100%) of the pension
2. If the employee is in receipt of Gratuity ,one half of the amount of commuted pension which he would have received had he commuted the whole (100%) of the pension

**Limits as per Income Tax Act 1961 for Gratuity and VRS**

Income	Limit prescribed under Income Tax Act 1961
Gratuity (Covered under Payment of Gratuity Act 1972)	Lower of the following is exempt: 1. Rs.3,50,000 2. 15 days salary (out of 26 days) based on last drawn salary for each completed year of service or part of year in excess of 6 months 3. Actual Gratuity received

<p>Gratuity (Not covered under Payment of Gratuity Act 1972)</p>	<p>Lower of the following is exempt:</p> <ol style="list-style-type: none"> <li>1. Rs.3,50,000</li> <li>2. Half month's salary (on the basis of last 10 months average immediately preceding the month in which any such event occurs) for each completed year of service (fraction to be ignored)</li> <li>3. Actual Gratuity received</li> </ol>
<p>Voluntary Retirement Scheme</p>	<p>Lower of the following is exempt</p> <ol style="list-style-type: none"> <li>1. Last drawn salary X 3 X completed years of service (or) Last drawn salary X remaining months of service which ever is lower  (OR)</li> <li>2. Rs.50,0,000</li> <li>3. Actual compensation</li> </ol>

Gratuity received during service is always taxable .Where gratuity is received by an employee from two or more employers in the same year then the aggregate amount of gratuity exempt cannot exceed the above limits prescribed

### **Income from House Property**

Generally, only real income is taxable under the law, however in certain cases notional figure shall be adopted for computing the total income of an assessee when law forces. For example Sec 50 C under Income Tax act 1961 provides for adoption of guideline value of an immovable property as the consideration if real sale consideration is lesser than such value. On account of this provision notional capital gain may be taxed. On the basis of such concept , there are certain circumstances under the head Income from House property where notional income is taxable.

The annual value of property, consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy or the purposes of any business or profession carried on by him, the profits of which are chargeable to income tax

, shall be chargeable to income tax under the head "Income from House Property The term 'buildings' includes any building (whether occupied or intended for self-occupation), office building, godown, storehouse, warehouse, factory, halls, shops, stalls, platforms, cinema halls, auditorium etc. Income arising out of the building or a part of the building is covered.

<b>S.No</b>	<b>Description</b>	<b>Clause</b>
1	Applicability	23
2	Computation of Income from House Property	24
3	Scope of Gross Rent	25
4	Deductions from Gross Rent	26
5	Provision relating to Advance Rent	27

**Income from House Property – Clause 23**

(1) The income from any house property owned by the person shall be computed under the head “Income from house property”.

(2) The income from any house property shall be computed under this head notwithstanding that the letting, if any, of the property is in the nature of trade, commerce or business.

(3) The income from any house property owned by two or more persons having definite and ascertainable shares shall be computed separately for each such person in respect of his share.

(4) The provisions of this section shall not apply,-

(a) to any portion of the property which the person occupies for the purposes of his business, the income from which is computed under the head “Income from business”;

(b) to any property which is not ready for use during the financial year.

**Computation of income from house property – Clause 24**

The income from a property shall be the gross rent as reduced by the aggregate amount of the deductions referred to in section 26.

**Scope of gross rent – Clause 25**

(1) The gross rent in respect of a property shall be the higher of the amount of contractual rent and presumptive rent, for the financial year.

(2) The contractual rent referred to in sub-section (1) shall be the rent receivable by the assessee under a contract, whether in writing or otherwise.

(3) The presumptive rent referred to in sub-section (1) shall be six per cent. of -

## **Draft Direct Taxes Code Bill 2009**

- (a) the ratable value fixed by any local authority in respect of the property; or
  - (b) the cost of construction or acquisition of the property if no such value has been fixed by the local authority.
- (4) The gross rent shall, regardless of anything to the contrary contained in subsection (1), be taken to be nil if the property consists of a house or part of a house which is not let out.
- (5) The provisions of sub-section (4) shall not apply if-
- (a) the house or part of the house is actually let during any part of the financial year; or
  - (b) any other benefit is derived from it by the owner.
- (6) The provisions of sub-section (4) shall, in a case where a person owns more than one house, apply only in respect of one house, which the person may specify at his option.

### **Deductions from gross rent – Clause 26**

(1) The aggregate amount of deductions for the purposes of section 24 shall be the following:-

- (a) the amount of taxes levied by a local authority in respect of the property if the amount is actually paid during the financial year;
  - (b) the amount of tax on services paid to the Central Government in respect of rent, if the amount is actually paid during the financial year;
  - (c) a sum equal to twenty per cent. of the gross rent determined under section 25, towards repair and maintenance of the property;
  - (d) the amount of any interest,-
    - (i) on capital borrowed for the purposes of acquiring, constructing, repairing, renewing or reconstructing the property, or
    - (ii) on capital borrowed for the purpose of repayment of the capital referred to in sub-clause (i).
- (2) The aggregate amount of deduction referred to in sub-section (1) shall be nil in respect of the property referred to in sub-section (4) of section 25.

### **Special provision for advance rent received – Clause 27**

The amount of rent received in advance shall be included in the gross rent in the financial year to which the rent relates.

After the simplification in determination of taxable income , the Code will have a new scheme for computation of income from house property.

**Applicability**

1. Income earned from any house property owned by assessee is computed under this head.
2. If a property is owned by two or more persons , then income shall be ascertained separately for each such person in respect of his share.
3. This Section shall not be applicable to house property owned for the purpose of business or as stock in trade.
4. This section shall not apply to property which is not ready for use during the financial year.

**Computation of Income from House Property**

Gross Rent	Xxxxxx
<b>Less: Deductions under Clause 26</b>	
1. Corporation / Municipal Taxes Paid	Xxxxxx
2. Service Tax payable/ paid to Central government	Xxxxxx
3. 20% OF Gross Rent(towards repairs & maintenance)	
4. Interest on capital borrowed	
<b>Income under the head “House Property”</b>	Xxxxxx

**Components under this head in detail**

**Gross Rent**

Gross Rent in respect of a house property shall be higher of (a) Contractual Rent or b) Presumptive Rent for the financial year.

Contractual Rent shall be the rent receivable by the assessee under a contract whether in writing or otherwise.

Presumptive rent shall be six per cent. of -

(a) the ratable value fixed by any local authority in respect of the property(Municipal Value);

or

(b) the cost of construction or acquisition of the property (if no such value has been fixed by the local authority)

Gross rent of self occupied property will deemed to be nil, as at present. In addition to that gross rent of any one palace in the occupation of a Ruler will also be deemed to be nil.

If the house property or part of property has not been let out throughout the year, then Gross rent shall be taken as Nil. However if (a) the house or part of the house is actually let during any part

of the financial year; or (b) any other benefit is derived from it by the owner then gross rent shall not be considered as nil, it has to be computed in accordance with the provisions of the act.

**Taxes Paid**

1. Corporation or Municipal Taxes and any other amount of taxes levied by a local authority in respect of the property if the amount is actually paid during the financial year
2. The amount of tax on services paid to the Central Government in respect of rent, if the amount is actually paid during the financial year.(if the amount is included in gross rent for the purpose of computation)  
Deduction can be claimed only when taxes should be borne by the assessee and should be paid during the previous year.

**Standard Deduction**

A sum equal to 20 % of gross rent determined under Clause 26. It is a flat deduction on the gross rent which is automatic and does not depend on quantum of actual expenditure incurred. This deduction is allowed even if no expenditure is incurred or even expenditure incurred by tenants. This deduction is not available for self occupied property.

**Interest on Capital Borrowed**

Any amount of interest payable on loans borrowed for the purpose of acquisition, construction, renovation, repairing or reconstruction can be claimed as deduction.

Any amount of interest payable on loans borrowed for the purpose of repayment of original loan taken shall also be entitled for deduction.

Interest relating to the year of completion of construction can be fully claimed in that year irrespective of date of completion.

Interest accrued during the construction period preceding to the year of completion of construction can be accumulated and claimed as deduction under five years in equal instalments commencing from the year of completion of construction.

**INCOME FROM BUSINESS UNDER DRAFT DIRECT TAX CODE BILL 2009**

Computation of income from business is the most important head of income that has profound implications for the Revenue. Clauses 28 to 43 of the Direct Tax Code, 2009 deals with income from business.

The rules prescribed under the Direct Tax Code for computation of income from business is given in a nutshell hereunder:

- Every business will constitute a separate source for the purpose of computation of income provided there is no interdependence between the two businesses.



## **Draft Direct Taxes Code Bill 2009**

- All assets will be classified into business and investment assets, wherein business assets will be further classified into business trading assets and business capital assets.
- Only income from transactions in business assets to form part of business income.
- Profit on sale of business capital assets, profit on sale of an undertaking under a slump sale, transfer of any self generated business asset, etc. will be treated as business income.
- Business expenditure will be classified into (i) operating expenditure (ii) permitted financial charges and (iii) capital allowances.
- Loss on sale of business capital assets (which was hitherto treated as a capital loss) will be treated as an intangible asset on which depreciation will be allowed. Effectively, a taxpayer will be allowed to set-off only a fraction of loss every year.
- Presumptive basis of taxation will apply for certain businesses.
- Separate income determination regimes have been provided for certain specified businesses such as business of insurance, operating a qualifying ship, mineral oil or natural gas, generation, transmission or distribution of power, developing a special economic zone, operating and maintaining a hospital, processing, preserving and packaging of fruits or vegetables and developing or operating and maintaining or developing, operating and maintaining any infrastructure facility

### **Income from residuary sources**

#### **Introduction**

Income of every kind, which is not chargeable to income tax under the heads 1) Income from Employment 2) income from house property, 3) profits and gains of business and profession, and capital gains can be taxed under the head "income from other sources". However such income should also not fall under income not forming part of Total income.

Examples:

1. Dividend Income
2. Income from letting out of Plant & Machinery of Hire
3. Family Pension
4. Interest on Securities

## Draft Direct Taxes Code Bill 2009

5. Interest on Deposits
6. Royalty, Copyright fees
7. Consideration for Know-how., etc

*However income by way of winnings from lotteries, crossword puzzles, races including horse race, card games and other games of any sort, gambling or betting of any form of nature which were under Income from other sources as per Income Tax Act 1961 are shifted to special head named Income from Special Sources under the Draft direct taxes code Bill 2009.*

S.No	Description	Clause
1	Applicability	54
2	Computation of Income from Residuary Sources	55
3	Scope of Gross Income from Residuary Sources	56
4	Deductions from Gross Residuary sources	57

### **Method of Accounting**

Clause 85(1) provides that income chargeable under the head income from other sources shall be computed either on cash or mercantile system of accounting, depending on the method of accounting regularly employed by the assessee. Under Income Tax Act 1961 the assessee is also required to follow the Accounting Standards notified by the Central Government (for Accounting Standard refer notification No. 9949 [F. No. 132/7-95-TPL] dt. 25.1.1996).

### **Income from residuary sources – Clause 54.**

The income of every kind falling under the class 'income from ordinary sources', shall be computed under the head "Income from residuary sources", if it is not required to be included in computing the income under any of the heads specified in item A to D of section 14 .

### **Computation of income from residuary sources – Clause 55**

The income computed under the head "Income from residuary sources" shall be the gross residuary income as reduced by the amounts referred to in section 57.

### **Gross Income from Residuary Sources**

Income shall be chargeable under this head, only if not chargeable under other heads such as Income from Employment, Business Income.

Clause 56 is an 'inclusive' provision, hence all other income which are not covered under other heads of income shall be taxed under Income from residuary sources . The following are the income which are chargeable under Income from Residuary sources.

### **Dividend**

Generally Dividend received from a Indian company for which dividend distribution tax has paid has to be included in this head and subsequently it will be exempted as per Clause 9 referred to Schedule 6 of this Code. Clause 56 of this code includes other dividend income in respect of which dividend distribution tax has not been paid under Section 99. The following dividend distributed or paid by a company shall include the following, namely:-

- (i) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company;
- (ii) any distribution to its shareholders by a company of debentures, debenture stock, or deposit certificates in any form, whether with or without interest, and any distribution to shareholders of its preference shares by way of bonus, to the extent to which the company possesses accumulated profits, whether capitalised or not;
- (iii) any distribution made to the shareholders (other than shareholders not entitled in the event of liquidation to participate in the surplus assets) of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not;
- (iv) any distribution to its shareholders (other than shareholders not entitled in the event of liquidation to participate in the surplus assets) by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits, whether such accumulated profits have been capitalised or not; and
- (v) any payment by a closely-held company, to the extent of its accumulated profits, if such payment is - (A) by way of advance or loan to a shareholder being the beneficial owner of equity shares holding not less than ten per cent of the voting power; or (B) by way of advance or loan to any Hindu undivided family, or a firm, or an association of persons, or a body of individuals, or a company (hereafter in this clause referred to as the said concern), in which such shareholder is a

member or a partner or a shareholder, and in which he has a substantial interest; or (C) to any person on behalf, or for the individual benefit, of such shareholder; and

(b) shall not include the following, namely:-

(i) any advance or loan made to a shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company;

(ii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off;

(iii) any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A of the Companies Act, 1956; and

(iv) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company);

**Income chargeable under this head, only if not chargeable under the head 'Income from business' or 'Income from Employment'**

1. any amount received from his employees as contributions to any fund setup for their welfare, if the income is not included under the head "Income from business";
2. income from machinery, plant or furniture belonging to the person and let on hire, if the income is not included under the head "Income from business";
3. any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy;
4. any amount received under a Keyman insurance policy including the sum allocated by way of bonus on such policy, if such income is not included under the heads "Income from employment" or "Income from business";
5. The aggregate of any moneys and the value of any specified property received, without consideration, by an individual or a Hindu undivided family;
6. the amount of voluntary contribution received by a person, other than an individual or a Hindu undivided family, from any other person;
7. Any amount received, or retained, on account of settlement or breach of any contract, if not included under the head "Income from business"

**Cash payments in respect of expenditure exceeding Rs.20000 or Rs.30000 as the case may be:**

Where the assessee any payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, if -

- (i) the payment or aggregate of payments is in respect of any expenditure referred to in clause (a) of sub-section (1) of Clause 57;
- (ii) the expenditure is allowable as a deduction in any financial year;
- (iii) the payment or aggregate of payments exceeds a sum of-(A) thirty thousand rupees if the payment is made for carriage of goods by road; and (B) twenty thousand rupees in any other case; and
- (iv) it has not been incurred in such cases and under such circumstances, as may be prescribed;

**In the following cases no expenditure shall be treated as Income under residual sources – Rule 6DD under Income Tax Act 1961.**

Payment made to banking and other credit institutions, such as the Reserve Bank of India commercial banks in the public and private sectors, co-operative banks or land mortgage, banks, primary credit/agricultural credit societies, Life Insurance Corporation of India, Industrial Finance Corporation of India, Industrial Development Bank of India, State Financial Corporations, etc. [rule 6DD(a)].

Payment made to Government (both Central and State Governments), if under the rules framed by it, such payment is required to be made in legal tender, such as a payment of direct taxes, customs duty, excise, railway freight, sales tax, etc. [rule 6DD(b)].

Payment required to be made in cash under a contract entered into before April 1, 1969 [rule 6DD(c)].

Payment through the banking system, e.g., letters of credit, mail or telegraphic transfer, book adjustment in the same bank or between one bank and another and bills of exchange including hundies made payable to a bank [rule 6DD(d)].

Payment made by book adjustment by an assessee in the account of the payee against money due to the assessee for any goods supplied or services rendered by him to the payee [rule 6DD(e)].

## **Draft Direct Taxes Code Bill 2009**

Payment to a cultivator, grower or producer in respect of the purchase of agricultural or forest produce or product of animal husbandry (including hides and skins) or dairy or poultry farming or fish or fish products or products of horticulture or apiculture (even if these products have been subjected to some processing provided the processing has been done by the cultivator, grower or the producer of the product) [rule 6DD(f)].

Payment made to a producer in respect of the purchase of the products manufactured or processed without the aid of power in a cottage industry [rule 6DD(g)].

Payment made to a person who ordinarily resides or carries on business in a village not served by any bank [rule 6DD(h)], [if, however, the payment is made in a town having banking facilities to a villager whose village has no bank, the exemption from the operation of section 40A(3) will not be available—Press Note dated May 8, 1969].

Payment of terminal benefits, such as gratuity, retrenchment compensation, etc., in respect of employees drawing salary not exceeding Rs. 7,500 per year in the year of retirement, etc., or in the preceding year [rule 6DD(i)].

Payment made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 and when such employee —

- a] is temporarily posted for a continuous period of 15 days or more in a place other than his normal place of duty or on a ship ; and
- b] does not maintain any account in any bank at such place or ship [rule 6DD(j)]1.

Payment required to be made on a day on which the banks were closed either on account of holiday or strike [rule 6DD(k)].

Payment made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person [rule 6DD(l)].

### **Unexplained Credits, Investments, Money , jewelley etc**

Any amount found credited in the books of an person maintained for the financial year, if -

- (i) the person offers no explanation about the nature and source thereof; or
- (ii) the person offers an explanation but fails to substantiate the explanation; or

## Draft Direct Taxes Code Bill 2009

(iii) the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory;

The value of any investment made by the person in the financial year to the extent for which,-

(i) the person offers no explanation about the nature and source of the investments; or

(ii) the person offers an explanation but fails to substantiate the explanation;

or

(iii) the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory;

The value of any money, bullion, jewellery or other valuable article owned by the person to the extent for which,-

(i) the person offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article; or

(ii) the person offers an explanation but fails to substantiate the explanation; or

(iii) the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory;

The amount of any expenditure incurred by the person in the financial year, if-

(i) the person offers no explanation about the source of such expenditure or part thereof;

or

(ii) the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory;

### **Additional Points**

1. The burden of proof is on the assessee in this regards, to establish necessary evidences
2. In the case where there is unabsorbed losses , and these undisclosed incomes can be set off against losses.

### **Gross residuary income – Clause 56**

(1) The gross residuary income shall include all accruals, or receipts, in the nature of income, which do not form part of,-

(a) income from special sources; and

(b) income under any of the heads specified in items A to D of section 14.

(2) The gross residuary income shall, regardless of anything to the contrary contained in Part-B to Part-E of this Chapter and without prejudice to the generality of the provisions of sub-section (1), include the following, namely:-

- (a) dividends, other than dividends in respect of which dividend distribution tax has been paid under section 99;
- (b) interest, other than interest accrued to, or received by, permitted financial institutions;
- (c) income from the activity of owning and maintaining horses for running in horse race;
- (d) any amount received from his employees as contributions to any fund setup for their welfare, if the income is not included under the head "Income from business";
- (e) income from machinery, plant or furniture belonging to the person and let on hire, if the income is not included under the head "Income from business";
- (f) any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy;
- (g) any amount received under a Keyman insurance policy including the sum allocated by way of bonus on such policy, if such income is not included under the heads "Income from employment" or "Income from business";
- (h) the aggregate of any moneys and the value of any specified property received, without consideration, by an individual or a Hindu undivided family;
  - (i) the amount of voluntary contribution received by a person, other than an individual or a Hindu undivided family, from any other person;
- (j) any amount received, or retained, on account of settlement or breach of any contract, if not included under the head "Income from business";
- (k) any payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, if -
  - (i) the payment or aggregate of payments is in respect of any expenditure referred to in clause (a) of sub-section (1) of section 57;
  - (ii) the expenditure is allowable as a deduction in any financial year;
  - (iii) the payment or aggregate of payments exceeds a sum of-(A) thirty thousand rupees if the payment is made for carriage of goods by road; and (B) twenty thousand rupees in any other case; and
  - (iv) it has not been incurred in such cases and under such circumstances, as may be prescribed;



(l) any amount found credited in the books of an person maintained for the financial year, if -

- (i) the person offers no explanation about the nature and source thereof; or
- (ii) the person offers an explanation but fails to substantiate the explanation; or
- (iii) the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory;

(m) the value of any investment made by the person in the financial year to the extent for which,-

- (i) the person offers no explanation about the nature and source of the investments; or
- (ii) the person offers an explanation but fails to substantiate the explanation; or
- (iii) the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory;

(n) the value of any money, bullion, jewellery or other valuable article owned by the person to the extent for which,-

- (i) the person offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article; or
- (ii) the person offers an explanation but fails to substantiate the explanation; or
- (iii) the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory;

(o) the amount of any expenditure incurred by the person in the financial year, if-

- (i) the person offers no explanation about the source of such expenditure or part thereof; or
- (ii) the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory;

(p) any amount received as loan or deposit, otherwise than by an account payee cheque or account payee bank draft, from any person, if the aggregate amount of such loan or deposit exceeds twenty thousand rupees;

(q) any repayment of loan or deposit, otherwise than by an account payee cheque or account payee bank draft, if the aggregate amount, including interest, due to the payee, either in his own name or jointly with any other person, on the date of such repayment exceeds twenty thousand rupees;

(r) any amount received, or withdrawn, under any circumstances, from any account maintained with any permitted savings intermediaries, referred to in sub-section (2) of section 66, representing,-

(i) the principal amount of the savings; or

(ii) interest, dividend, bonus, capital appreciation or any other form of return on the investment, by whatever name called;

(s) any amount deemed to be the income under sub-section (6) of section 71.

(t) the value of the net assets, held by any person on the first day of the financial year in which the person ceases to be a non-profit organisation, determined in the prescribed manner.

(u) any consideration accrued, or received, in respect of transfer of any business asset, which is self-generated, if the consideration is not included under the head 'income from business';

(v) any amount accrued, or received, on account of the cessation, termination or forfeiture of any agreement entered by the person, if the amount is not included under the head 'income from business';

(w) any amount accrued, or received, as reimbursement of any expenditure incurred by the person, if the amount is not included under the head 'income from business';

(x) any amount received, or withdrawn, under any circumstances from the account maintained under the Capital Gains Savings Scheme representing the principal amount or any accretion thereto;

(y) any amount received, or withdrawn, under any circumstances from the Retirement Benefit Account referred to in sub-section (2) of section 22, representing the principal amount or any accretion thereto; and

(z) any amount accrued, or received, as advance, security deposit or otherwise, from the long term leasing or transfer of whole or part of, or any interest in, any investment asset.

(3) The amount referred to in clause (h) of sub-section (2) shall not include any amount received

-

(a) from any relative;

(b) on the occasion of the marriage of the individual;

(c) under a will or by way of inheritance;

(d) in contemplation of death of the payer;

(e) from any local authority; or

(f) from any non-profit organisation.

(4) For the purposes of this section,-

(a) 'relative' shall not include any person referred to in sub-clause (g) of clause (233) of section 284;

(b) 'specified property' shall mean-

(i) immovable property being land or building or both;

(ii) shares and securities;

(iii) jewellery;

(iv) archaeological collections;

(v) drawings;

(vi) paintings;

(vii) sculptures; or

(viii) any work of art;

(c) the assessee shall be deemed not to have received, or withdrawn, any amount in the financial year from any account maintained with any permitted savings intermediary, if the amount is used for,-

(i) purchasing an annuity plan; or

(ii) rolling over the amount from one account with the permitted savings intermediary to any other account with the same or any other permitted savings intermediary; and

(d) value of any property referred to in clause (h) of sub-section (2) shall be,-

(i) the stamp duty value in the case of an immovable property as reduced by the amount of consideration, if any, paid by the assessee; and

(ii) the fair market value in the case of any other property as reduced by the amount of consideration, if any, paid by the assessee;

**Deductions – Clause 57.**

(1) The amount of deductions referred to in section 55 shall be the aggregate of -

(a) the amount of expenditure specified in sub-section (2), if -

(i) the expenditure is laid out or expended, wholly and exclusively, for the purposes of making or earning the gross residuary income; and

(ii) it fulfills all other conditions, if any, specified therein; and

(b) the amount of deductions specified in sub-section (3) subject to the fulfilment of the conditions, if any, specified therein;

- (2) The amount of expenditure referred to in clause (a) of sub-section (1) shall be the following:-
- (a) any reasonable sum paid by way of remuneration or commission;
  - (b) the amount determined, so far as may be, in accordance with the provisions of clause (ii), or clause (iii), of sub-section (2) of section 33;
  - (c) the amount determined, so far as may be, in accordance with the provisions of clause (xxxii) of sub-section (2) of section 33 in respect of income of the nature referred to in clause (d) of sub-section (2) of section 56;
  - (d) the amount determined, so far as may be, in accordance with the provisions of section 35 and subject to the provisions of sub-section (3) of section 32 in respect of income of the nature referred to in clause (e) of sub-section (2) of section 56; and
  - (e) any other expenditure, not being in the nature of capital expenditure.
- (3) The amount of deduction referred to in clause (b) of sub-section (1) shall be the following -
- (a) any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, if –
    - (i) the premium payable for any of the years during the term of the policy does not exceed five per cent of the actual capital sum assured; and
    - (ii) the sum is received only upon completion of the original period of contract of the insurance or upon the death of the insured;
  - (b) the amount equal to thirty-three and one-third per cent of income or fifteen thousand rupees, whichever is less, in respect of family pension; and
  - (c) the aggregate amount referred to in clause (h) of sub-section (2) of section 56 to the extent the aggregate does not exceed fifty thousand rupees.
- (4) The amount of deduction referred to in section 55 shall, in the case of the income referred to in sub-section (6) of section 85, be a sum equal to fifty per cent of the income, regardless of anything to the contrary contained in this section.
- (5) The following amounts shall, regardless of anything to the contrary contained in this section, not be allowed as a deduction, namely:-
- (a) any amount relating to personal expenses of the person;
  - (b) any amount paid on account of wealth-tax; or
  - (c) any sum received under a Keyman insurance policy;

(6) The provisions of sub-section (6) of Clause 33 shall, so far as may be, apply in computing the income under this head as they apply in computing the income under the head "Income from business".

### **Aggregation of income**

#### **Set off of Losses – Ordinary Sources**

When the net result of computation for any financial year in respect of any source of income falling under any head of income is loss the assessee shall be entitled to set off against his income from any other source under the same head. However the income under the head capital gains cannot be adjusted accordingly as above.

Where the net result of the computation under any head of income in respect of any assessment year is a loss, the assessee shall be entitled to have such amount of loss set off against his income assessable for that financial year under any other head of income under the income from ordinary sources.

#### **Carry Forward – Ordinary Sources**

Any loss unabsorbed during previous financial year from ordinary sources shall be set off against the income from ordinary sources during current year. However if the net result is negative the income for current year shall be nil and the loss can be carried forward for next year.

#### **Aggregation of income under the class 'Income from Ordinary Sources'- Clause 58**

(1) The income under any head of income, other than 'Capital gains', for any financial year shall be the aggregate of the amount of income computed in respect of each source of income falling under that head of income, for the financial year.

(2) The income under any head of income for any financial year, as computed under sub-section (1), shall be aggregated with the income under any other head of income computed under that sub-section or Clause 47, for the financial year; and the net result of the aggregation shall be the 'current income from ordinary sources', for the financial year.

(3) The 'current income from ordinary sources' shall be aggregated with the 'unabsorbed preceeding year loss from the ordinary sources', if any; and the net result of the aggregation shall be the 'gross total income from ordinary sources', for the financial year.

(4) The 'gross total income from ordinary sources', for the financial year, shall be treated as 'nil', if the net result of the aggregation under sub-section (3) is negative; and the absolute value of the net result shall be the amount of 'unabsorbed current loss from ordinary sources', for the financial year.

### **Set off of Losses – Special Sources**

When the net result of computation for any financial year in respect of any source of income under special sources falling under any head of income is loss the assessee shall be entitled to set off against his income from any other source of special income under the same head.

Where the net result of the computation under any head of income under special sources in respect of any financial year is a loss, the assessee shall be entitled to have such amount of loss set off against his income assessable for that financial year under any other head of income under the income from special sources.

### **Carry Forward – Special Sources**

Any loss unabsorbed during previous financial year from ordinary sources shall be set off against the income from ordinary sources during current year. However if the net result is negative the income for current year shall be nil and the loss can be carried forward for next year.

### **Aggregation of income under the class 'Income from Special Sources' – Clause 59**

(1) The income from any special source referred to in Rule 3 of the First Schedule shall be the 'current income from the special source', for the financial year.

(2) The 'current income from the special source' referred to in sub-section (1) shall be aggregated with the 'unabsorbed preceeding year loss from the special source', if any; and the net result of the aggregation shall be the 'gross total income from the special source', for the financial year.

(3) The 'gross total income from the special source' referred to in sub-section (2) shall be treated as 'nil', if the net result of the aggregation under sub-section (3) is negative; and the absolute value of the net result shall be the amount of 'unabsorbed current loss from the special source', for the financial year.

(4) The 'gross total income from any special source' computed under the foregoing provisions shall be aggregated with the 'gross total income from any other special source', computed under the foregoing provisions, for the financial year; and the net result of the aggregation shall be the 'total income from special sources', for the financial year.

## **TAX DEDUCTED AT SOURCE UNDER DRAFT DIRECT TAX CODE BILL 2009**

### **Concept of Tax Deducted at Source (TDS)**

Assessee pays tax in the assessment year on the income earned in previous year. Due to this rule the tax collection is delayed till the completion of the previous year. Even sometimes people conceal their income and the tax is not paid at all. In order to overcome these problems, government started deducting some amount of tax from the amount which is receivable by the assessee. The amount of tax so deducted is called as "Tax Deducted at Source", i.e., TDS.

Tax deducted at source is one of the modes of collecting Income-tax from the assessees. Such collection of tax is effected at the source when income arises or accrues. Hence where any specified type of income arises or accrues to any one, the Income-tax Act enjoins on the payer of such income to deduct a stipulated percentage of such income by way of Income-tax and pay only the balance amount to the recipient of such income. The tax so deducted at source by the payer has to be deposited in the Government treasury to the credit of Central Govt. within the specified time. The tax so deducted from the income of the recipient is deemed to be payment of Income-tax by the recipient at the time of his assessment. Income from several sources is subjected to tax deduction at source. Presently this concept of T.D.S. is also used as an instrument in enlarging the tax base. Some of the incomes subjected to T.D.S. are salary, interest, dividend, interest on securities, winnings from lottery, horse races, commission and brokerage, rent, fees for professional and technical services, payments to non-residents etc.

Where tax has been so deducted, the payer of income (or deductor) is required to issue a TDS certificate to the deductee (recipient of the income) to enable the latter to claim a credit for the tax already deducted from his income against his tax liability for the year or to claim a refund, as the case may be.

### **Objectives of TDS**

## **Draft Direct Taxes Code Bill 2009**

1. To enable the salaried people to pay the tax as they earn every month. This helps the salaried persons in paying the tax in easy installments and avoids the burden of a lump sum payment.
2. To collect the tax at the time of payment of income to various assesseees such as contractors, professionals etc.
3. Government requires funds throughout the year. Hence, advance tax and tax deducted at source help the government to get funds throughout the year and run the government smoothly.
4. It helps to spread the tax net wide enough to include persons who might otherwise have evaded taxes. The minimum thresholds are raised and the rates are reasonable and comparable with the rates prevailing in other countries. Hence, it is very vital to make all the persons earning the taxable income pay the tax. But, the best way to make them pay is to deduct tax at source

### **TDS provisions under the Direct Tax Code**

Clauses 195 to 201 deals with deduction at source.

**Liability to deduct tax at source (Clause 195)** – Any person responsible for making specified payment should at the time of making payment, deduct income tax there from at the appropriate rate. The rates have been mentioned in the Third Schedule for resident deductee and in the Fourth Schedule for non-resident deductee. In case the deductee has failed to furnish his Permanent Account Number to the deductor, then the higher of the following rates will prevail, i.e. twenty percent and the rate specified in the Schedule.

**Payment of Income and Deduction of Tax (Clause 196 (1))** – The payment of income will be deemed to have been made if the amount payable has been settled in cash, by issue of cheque or draft, by credit to any account whether called suspense account or by any other name or by any other prescribed mode.

The deductor may, at the time of making any deduction of tax from the income liable to be taxed under the head “Income from employment”, increase or reduce the amount to be deducted from a deductee for the purposes of adjusting any deficiency, or excess, arising out of any previous deduction or non-deduction during the financial year in respect of such deductee.



For the purposes of deduction of tax, the income should be increased to such amount as would, after deduction of tax thereon at the rates specified in the Third Schedule or the Fourth Schedule, be equal to the net amount payable under an agreement, or any other arrangement, if the tax chargeable on any income is to be borne by the deductor in pursuance to such agreement or arrangement.

**Certificate for no deduction of tax (Clause 197)** - The deductee can make an application, in the prescribed form and manner, to the Assessing Officer for a certificate for no deduction of income-tax from payments to be received by him. The deductor can make an application, in the prescribed form and manner, to the Assessing Officer for a certificate for no deduction of income-tax from payments to be made by him to a non-resident deductee.

The Assessing Officer will give to the deductee or the deductor, as the case may be, such certificate as may be appropriate, if he is satisfied that the total income of the deductee justifies no deduction of income-tax. The deductor need not deduct any tax the certificate issued is cancelled by the Assessing Officer; or the expiry of the validity of the certificate.

The Board after having regard to the convenience of the deductee and the interests of revenue, prescribe the cases in which, and the circumstances under which, an application may be made for the grant of the certificate and the conditions subject to which such certificate may be granted and provide for all other matters connected therewith.

**Payment of tax deducted, certificate to deductee etc. (Clause 198)** - Every deductor should pay the sum deducted to the credit of the Central Government within the prescribed time and manner. Every deductor should furnish, within the prescribed time, to the deductee a certificate to the effect that tax has been deducted and specifying the particulars as may be prescribed.

Every deductor should submit a return of tax deduction in the manner prescribed by the Board.

The Board will prescribe the following in respect of the return of tax deduction:-

- (a) the period in respect of which the return is to be furnished;
- (b) the form of the return and the particulars therein;
- (c) the manner of verification of the return;
- (d) the time by, and the medium in, which the return is to be delivered;
- (e) the income-tax authority, or any other person, authorized to receive the return; and

(f) any other matters connected therewith.

**Reporting of payments without deduction of tax (Clause 199)** – Every deductor who is a permitted financial institution or a co-operative society should submit a return in respect of payment of interest to residents without deduction of tax.

The Board will prescribe the following in respect of the return:-

- (a) the period in respect of which the return is to be furnished;
- (b) the form of the return and the particulars therein;
- (c) the manner of verification of the return;
- (d) the time by, and the medium in, which the return is to be delivered;
- (e) the income-tax authority, or any other person, authorized to receive the return; and
- (f) any other matters connected therewith.

**No deduction of tax in the following cases (Clause 200)** –

- (a) any payment, other than salary, made by an individual or a Hindu undivided family if the individual or the Hindu undivided family is not liable to audit of accounts under section 84 during the financial year immediately preceding the financial year in which the payment is made;
- (b) any interest payable on any security of the Central Government or a State Government;
- (c) any interest on debenture payable to an individual, if -
  - (i) the debentures are issued by a widely held company;
  - (ii) the debentures are listed in a recognized stock exchange in India; and
  - (iii) the aggregate amount payable during the financial year does not exceed two thousand five hundred rupees;
- (d) any interest on time deposits payable, if-
  - (i) the time deposits are made with a banking company or a co-operative bank or a housing-finance public company; and
  - (ii) the aggregate amount payable by a branch of the bank or company during the financial year does not exceed ten thousand rupees;
- (e) any other interest payable if the aggregate amount of the payments during the financial year does not exceed five thousand rupees;
- (f) any interest payable to,-

## Draft Direct Taxes Code Bill 2009

- (i) any banking company;
- (ii) any co-operative bank;
- (iii) any financial corporation established by or under a Central or State or Provincial Act;
- (iv) any insurer;
- (v) any mutual fund; or
- (vi) any institution, association or body, or class of institutions, associations or bodies, which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette;
- (g) any interest payable by a firm to a partner of the firm;
- (h) any interest payable in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf in the Official Gazette;
- (i) any interest payable in respect of deposits (other than time deposits) with a banking company or a co-operative bank;
- (j) any interest payable by the Central Government under any provisions of this Code or the Income-tax Act, 1961;
- (k) any interest payable on the amount of compensation awarded by the Motor Accidents Claims Tribunal, if the aggregate of the amounts of such interest paid, or credited, during the financial year does not exceed one hundred thousand rupees;
- (l) any amount payable on maturity, or redemption, of a zero coupon bond;
- (m) any payment for carriage of goods by road transport if the payee furnishes his Permanent Account Number to the payer;
- (n) any payment to a contractor in respect of works contract, service contract, advertising, broadcasting and telecasting, supply of labour for carrying out any works, or service, contract or carriage of goods or passengers by any mode of transport, other than by railways, if -
  - (i) the amount of any payment during the financial year does not exceed twenty thousand rupees; and
  - (ii) the aggregate amount of the payments during the financial year does not exceed fifty thousand rupees;
- (o) any payment of commission or brokerage, if the aggregate amount of the payments during the financial year does not exceed five thousand rupees;
- (p) any payment of rent, if the aggregate amount of the payments during the financial year does not exceed one hundred and twenty thousand rupees;

(q) any payment of compensation on acquisition of immovable property, if the aggregate amount of the payments during the financial year does not exceed one hundred thousand rupees.

**Credit for tax deducted (Clause 201)** – The Board make rules for the purpose of giving credit to the deductee, or any other person; the financial year for which such credit may be given; and any other matter connected therewith.

Types of payment that are applicable for deduction of tax at source under the Income Tax Act, 1961 are:

- 1) Salary and all positive incomes under any head on income (Sec 192)
- 2) Interest on Securities (Sec 193)
- 3) Dividend from Domestic Companies or companies which have made prescribed arrangement for declaration/payment of dividend within India (Sec.194)
- 4) Interest other than interest on securities (Sec 194A)
- 5) Winnings from Lottery or crossword puzzles (Sec 194B)
- 6) Winnings from horse races (Sec 194BB)
- 7) Payment to Contractors and sub-contractors in pursuance of any work of contract including supply of labour contract (Sec 194C)
- 8) Insurance Commission covering all payments for procuring Insurance business (Sec 194D)
- 9) Payment to non-resident sportsman or sports association or institution. (Sec.194E)
- 10) Payments in respect of deposits under National Savings Scheme (Sec.194EE)
- 11) Payment on account of repurchase of Units by Mutual Fund or UTI (Sec.194F)
- 12) Commission to Stockists, distributors, buyers and sellers of Lottery tickets including remuneration or prize on such tickets (sec 194G)
- 13) Commission or brokerage (sec 194H)

**Draft Direct Taxes Code Bill 2009**

14) Payment of rent (sec 194I)

15) Fees for professional &amp; technical services (sec 194J)

16) Other sums (Sec.195)

**Rates for deduction of Tax at Source in case of resident deductee under the Third Schedule of Direct Tax Code**

<b>Sl.No.</b>	<b>Nature of payment</b>	<b>Rate</b>
<b>1</b>	Salary paid to employees	The average rate of income tax on salary paid during the financial year, computed on the basis of the rates specified in rule 1 of the First Schedule
<b>2</b>	Payment in respect of - (a) works contract; (b) service contract; (c) broadcasting and telecasting; or (d) supply of labour for carrying out any works, or service, contract.	One per cent.
<b>3</b>	Payment in respect of advertising	One per cent.
<b>4</b>	Payment in respect of carriage of goods and passengers by any mode of transport other than by railways.	One per cent.
<b>5</b>	Interest	Ten per cent.
<b>6</b>	Dividend other than dividend in respect of which dividend distribution tax is payable.	Ten per cent.
<b>7</b>	Commission, brokerage, remuneration, or prize, (by whatever name called) for rendering any services.	Ten per cent.
<b>8</b>	Fees for professional or technical services	Ten per cent.
<b>9</b>	Payment for royalty or non-compete fee	Ten per cent.
<b>10</b>	Payment of compensation on compulsory	Ten per cent.

**Draft Direct Taxes Code Bill 2009**

	acquisition of immovable property, other than agricultural land	
<b>11</b>	Rent (i) For the use of machinery or plant or equipment (ii) For use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings.	(i) One per cent (ii) Ten per cent.
<b>12</b>	Winning from any lottery or crossword puzzle or card game or other game of any sort	Thirty per cent.
<b>13</b>	Winnings from any horse race	Thirty per cent.
<b>14</b>	Any other income	Ten per cent.

**Rates for deduction of tax at source in the case of non-resident deductee under the Fourth Schedule of Direct Tax Code**

<b>Sl.No.</b>	<b>Nature of payment</b>	<b>Rate</b>
1	Investment income by way of - (i) interest (ii) dividends on which distribution tax has not been paid (iii) capital gains (iv) any other investment income	Twenty per cent. Twenty per cent. Thirty per cent. Twenty per cent.
2	On income by way of royalty or fees for technical services.	Twenty per cent.
3	On income of a non-resident sportsman (not being a citizen of India) by way of- (i) participation in India in any game (other than a game the winnings wherefrom are taxable under sub-item (b) of item 4 of rule 3 of the First Schedule) or sports; (ii) advertisement; or (iii) contribution of	Ten per cent

	articles relating to any game or sport in newspapers, magazines or journals in India.	
4	On income by way of winnings from lotteries, crossword puzzles, card games or any other game or gambling or betting.	Thirty per cent.
5	On income by way of winnings from horse races (not being the income from the activity of owning and maintaining race horses)	Thirty per cent.
6	On the whole of other income	Thirty five per cent.

**Determination of Income on presumptive basis under the Direct Tax Code**

The fourteenth schedule of the Direct Tax Code (DTC) deals with determination of income on presumptive basis.

Section 30 of the Code deals with computation of income from business. According to Section 30(2) of the Code, the profits of the business specified in the Table will be computed in accordance with the rules contained in the Schedule.

<b>Sr.No.</b> <b>(1)</b>	<b>Nature of Business</b> <b>(2)</b>	<b>Schedule</b> <b>(3)</b>
01.	Business of operating a qualifying ship	Tenth Schedule
02.	Business of mineral oil or natural gas	Eleventh Schedule
03.	Business of developing a special economic zone	Twelfth Schedule
04	Business specified in Rule 1 of the Thirteenth Schedule	Thirteenth Schedule
05	Business listed in column (2)	Fourteenth Schedule

	of the Table in the Fourteenth Schedule whose income is determined on presumptive basis	
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**1. Business of plying, hiring or leasing of heavy goods vehicle. (Sl.No.1 of Fourteenth Schedule)**

Provision under the DTC	<p>The aggregate amount of income from all the heavy goods vehicles owned by the assessee should be calculated at the rate of Rs.5000/- from each heavy goods vehicle for every month or part of a month during which the vehicle is owned by the assessee in the financial year.</p> <p>The amount of income determined will be further increased by the excess of the amount of income, if any, actually earned by the assessee from the business over the amount specified above.</p> <p>The provisions of the Fourteenth Schedule will not apply if the income of the person from this business exceeds two lakh rupees or (ii) his total turnover or gross receipts, as the case may be, in the business exceeds ten lakh rupees in any one of the three financial years immediately preceding the relevant financial year; or (iii) in a case where the business is newly set up in any financial year, his income from the business is likely to exceed two lakh rupees or his total turnover or gross receipts, as the case may be, in the business is likely to exceed ten lakh rupees, during such financial year and if he maintains the books of accounts mentioned in Section 83(4).</p> <p>The provisions of the Fourteenth Schedule will not apply even if the person carrying on this business, other than maintenance of books of accounts, gets his accounts audited for the financial year if - the total turnover or gross receipts, as the case may be, of the business exceeds forty lakh rupees in the financial year.</p>
Condition under	The number of heavy goods vehicles owned by the assessee in the financial



the DTC	year should be ten or less.
Provisions under the Income Tax Act, 1961	<p>According to Sec.44AE (2)(i), the profits and gains from each goods carriage being a heavy goods vehicle will be an amount equal to Rs.3,500/- for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year or as the case may be, an amount higher than the aforesaid amount as declared by him in his return of income.</p> <p>The above mentioned provisions will not apply if the assessee claims and produces evidence to prove that the profits and gains from the aforesaid business during the previous year are lower than the profits and gains mentioned above. For this he has to maintain the books of accounts and documents as required under Sub-section (2) of Section 44AA and also get his accounts audited and furnish an audit report as prescribed under Section 44AB.</p>
Comments	<p>The concept of previous year has been taken away with under the Direct Tax Code. Henceforth the term financial year alone would be used.</p> <p>The presumptive amount is Rs.3,500 under the Income Tax Act, 1961 while it has been raised to Rs.5000 under the Direct Tax Code.</p> <p>Maintenance of books of accounts and audit of accounts have to be done under Section 83 and 84. It has been wrongly mentioned as Section 85 and 86 under the Code.</p> <p>The provisions with regard to written down value of the business asset and presumption of loss, allowance or deduction are same under both the Direct Tax Code and the Income Tax Act, 1961.</p> <p>Under the Income Tax Act, 1961, the assessee can claim and produce evidence to show that the profits and gains from the business is lower than the amount specified under the Act. Whereas there is no such provision under the Direct Tax Code.</p>

**2. Business of plying, hiring or leasing of light goods vehicle (Sl.No.2 of Fourteenth Schedule)**

<p>Provision under the DTC</p>	<p>The aggregate amount of income from all the light goods vehicles owned by the assessee should be calculated at the rate of Rs.4500/- from each light goods vehicle for every month or part of a month during which the vehicle is owned by the assessee in the financial year.</p> <p>The amount of income determined will be further increased by the excess of the amount of income, if any, actually earned by the assessee from the business over the amount specified above.</p> <p>The provisions of the Fourteenth Schedule will not apply if the income of the person from this business exceeds two lakh rupees or (ii) his total turnover or gross receipts, as the case may be, in the business exceeds ten lakh rupees in any one of the three financial years immediately preceding the relevant financial year; or (iii) in a case where the business is newly set up in any financial year, his income from the business is likely to exceed two lakh rupees or his total turnover or gross receipts, as the case may be, in the business is likely to exceed ten lakh rupees, during such financial year and if he maintains the books of accounts mentioned in Section 83(4).</p> <p>The provisions of the Fourteenth Schedule will not apply even if the person carrying on this business, other than maintenance of books of accounts, gets his accounts audited for the financial year if - the total turnover or gross receipts, as the case may be, of the business exceeds forty lakh rupees in the financial year.</p>
<p>Condition under the DTC</p>	<p>The number of light goods vehicles owned by the assessee in the financial year should be ten or less.</p>
<p>Provisions under the Income Tax Act, 1961</p>	<p>According to Sec.44AE (2) (ii), the profits and gains from each goods carriage other than a heavy goods vehicle will be an amount equal to Rs.3,150/- for every month or part of a month during which the goods carriage is owned by the assessee in the previous year or as the case may be, an amount higher than the aforesaid amount as declared by him in his return of income.</p> <p>The above mentioned provisions will not apply if the assessee claims and produces evidence to prove that the profits and gains from the aforesaid</p>

	business during the previous year are lower than the profits and gains mentioned above. For this he has to maintain the books of accounts and documents as required under Sub-section (2) of Section 44AA and also get his accounts audited and furnish an audit report as prescribed under Section 44AB.
Comments	<p>The presumptive amount is Rs.3,150 under the Income Tax Act, 1961 while it has been raised to Rs.4500 under the Direct Tax Code.</p> <p>The provisions with regard to written down value of the business asset and presumption of loss, allowance or deduction are same under both the Direct Tax Code and the Income Tax Act, 1961.</p> <p>Under the Income Tax Act, 1961, the assessee can claim and produce evidence to show that the profits and gains from the business are lower than the amount specified under the Act. Whereas there is no such provision under the Direct Tax Code.</p>

**3. Any business other than – (i) the business referred to in serial numbers 1 and 2; (ii) any profession (Sl.No.3 of Fourteenth Schedule)**

Provision under the DTC	The income of the assessee should be eight percent of the total turnover or gross receipts of the assessee in the financial year from the business.
Condition under the DTC	The total turnover or gross receipts of the assessee in the financial year from the business is one crore rupees or less.
Provisions under the Income Tax Act, 1961	
Comments	

**4. Business of civil construction in connection with a turnkey power project approved by the Central Government in this behalf. (Sl.No.4 of Fourteenth Schedule)**

Provision under	The amount of income from the business will be a sum equal to ten percent
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<p>the DTC</p>	<p>of the amount paid or payable (whether in or out of India), directly or indirectly, to the assessee or to any person on his behalf on account of the civil construction.</p> <p>The amount of income determined will be further increased by the excess of the amount of income, if any, actually earned by the assessee from the business over the amount specified above.</p> <p>The provisions of the Fourteenth Schedule will not apply if the income of the person from this business exceeds two lakh rupees or (ii) his total turnover or gross receipts, as the case may be, in the business exceeds ten lakh rupees in any one of the three financial years immediately preceding the relevant financial year; or (iii) in a case where the business is newly set up in any financial year, his income from the business is likely to exceed two lakh rupees or his total turnover or gross receipts, as the case may be, in the business is likely to exceed ten lakh rupees, during such financial year and if he maintains the books of accounts mentioned in Section 83(4).</p> <p>The provisions of the Fourteenth Schedule will not apply even if the person carrying on this business, other than maintenance of books of accounts, gets his accounts audited for the financial year if - the total turnover or gross receipts, as the case may be, of the business exceeds forty lakh rupees in the financial year.</p>
<p>Condition under the DTC</p>	<p>The assessee is a foreign company.</p>
<p>Provisions under the Income Tax Act, 1961</p>	<p>According to Sec.44BBB, a foreign company engaged in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government in this behalf, a sum equal to ten percent of the amount paid or payable (whether in or out of India), to the said assessee or to any person on his behalf on account of such civil construction, erection, testing or commissioning shall be deemed to be profits and gains of such business chargeable to tax.</p>

	<p>The above mentioned provisions will not apply if the assessee claims and produces evidence to prove that the profits and gains from the aforesaid business during the previous year are lower than the profits and gains mentioned above. For this he has to maintain the books of accounts and documents as required under Sub-section (2) of Section 44AA and also get his accounts audited and furnish an audit report as prescribed under Section 44AB.</p>
Comments	<p>The provisions with regard to computation of income of business of civil construction in connection with a turnkey power project approved by the Central Government and carried on by a foreign company are almost the same both under the Direct Tax Code and Income Tax Act, 1961.</p> <p>Under the Income Tax Act, 1961, the assessee can claim and produce evidence to show that the profits and gains from the business is lower than the amount specified under the Act. Whereas there is no such provision under the Direct Tax Code.</p>

**5. Business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government in this behalf. (Sl.No.5 of Fourteenth Schedule)**

Provision under the DTC	<p>The amount of income from the business will be a sum equal to ten percent of the amount paid or payable (whether in or out of India), directly or indirectly, to the assessee or to any person on his behalf on account of erection, testing or commissioning.</p> <p>The amount of income determined will be further increased by the excess of the amount of income, if any, actually earned by the assessee from the business over the amount specified above.</p> <p>The provisions of the Fourteenth Schedule will not apply if the income of the person from this business exceeds two lakh rupees or (ii) his total turnover or gross receipts, as the case may be, in the business exceeds ten lakh rupees in any one of the three financial years immediately preceding the relevant</p>
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	<p>financial year; or (iii) in a case where the business is newly set up in any financial year, his income from the business is likely to exceed two lakh rupees or his total turnover or gross receipts, as the case may be, in the business is likely to exceed ten lakh rupees, during such financial year and if he maintains the books of accounts mentioned in Section 83(4).</p> <p>The provisions of the Fourteenth Schedule will not apply even if the person carrying on this business, other than maintenance of books of accounts, gets his accounts audited for the financial year if - the total turnover or gross receipts, as the case may be, of the business exceeds forty lakh rupees in the financial year.</p>
Condition under the DTC	The assessee is a foreign company.
Provisions under the Income Tax Act, 1961	<p>According to Sec.44BBB, a foreign company engaged in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government in this behalf, a sum equal to ten percent of the amount paid or payable (whether in or out of India), to the said assessee or to any person on his behalf on account of such civil construction, erection, testing or commissioning shall be deemed to be profits and gains of such business chargeable to tax.</p> <p>The above mentioned provisions will not apply if the assessee claims and produces evidence to prove that the profits and gains from the aforesaid business during the previous year are lower than the profits and gains mentioned above. For this he has to maintain the books of accounts and documents as required under Sub-section (2) of Section 44AA and also get his accounts audited and furnish an audit report as prescribed under Section 44AB.</p>
Comments	The provisions with regard to computation of income of business of civil construction and erection in connection with a turnkey power project approved by the Central Government and carried on by a foreign company are almost the same both under the Direct Tax Code and Income Tax Act, 1961 except for the difference that the business of civil construction and

	<p>business of erection of plant or machinery in connection with a turnkey project has been given under separate heads under the Direct Tax Code.</p> <p>Under the Income Tax Act, 1961, the assessee can claim and produce evidence to show that the profits and gains from the business are lower than the amount specified under the Act. Whereas there is no such provision under the Direct Tax Code.</p>
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**6. Business of providing services or facilities in connection with the prospecting for, or extraction or production of mineral oil. (Sl.No.5 of Fourteenth Schedule)**

<p>Provision under the DTC</p>	<p>The amount shall be a sum equal to ten percent of aggregate of –</p> <ul style="list-style-type: none"> <li>i. The amount paid or payable (whether in or out of India), directly or indirectly, to the assessee or to any person on his behalf on account of the provisions of services and facilities in connection with the prospecting for, or extraction or production of, mineral oils in India; and</li> <li>ii. The amount received or deemed to be received in India, directly or indirectly, by or behalf of the assessee on account of the provisions of services and facilities in connection with the prospecting for, or extraction or production of, mineral oils outside India.</li> </ul> <p>The amount of income determined will be further increased by the excess of the amount of income, if any, actually earned by the assessee from the business over the amount specified above.</p> <p>The provisions of the Fourteenth Schedule will not apply if the income of the person from this business exceeds two lakh rupees or (ii) his total turnover or gross receipts, as the case may be, in the business exceeds ten lakh rupees in any one of the three financial years immediately preceding the relevant financial year; or (iii) in a case where the business is newly set up in any financial year, his income from the business is likely to exceed two lakh rupees or his total turnover or gross receipts, as the case may be, in the business is likely to exceed ten lakh rupees, during such financial year and if</p>
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	<p>he maintains the books of accounts mentioned in Section 83(4). The provisions of the Fourteenth Schedule will not apply even if the person carrying on this business, other than maintenance of books of accounts, gets his accounts audited for the financial year if - the total turnover or gross receipts, as the case may be, of the business exceeds forty lakh rupees in the financial year.</p>
Condition under the DTC	The assessee is a non-resident.
Provisions under the Income Tax Act, 1961	
Comments	

### Maintenance of accounts

**83.** (1) Every person shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Code.

(2) Every person who has entered into an international transaction shall keep and maintain such information and document in respect thereof, as may be prescribed.

(3) The person referred to in sub-section (1) shall be the following:-

(a) any person carrying on legal, medical, engineering, architectural profession or profession of accountancy, technical consultancy, interior decoration or any other profession as is notified by the Board in the Official Gazette;

(b) any other person carrying on business, if,-

(i) his income from the business exceeds two lakh rupees;

(ii) his total turnover or gross receipts, as the case may be, in the business exceeds ten lakh rupees in any one of the three financial years immediately preceding the relevant financial year; or

(iii) in a case where the business is newly set up in any financial year, his income from the business is likely to exceed two lakh rupees or his total turnover or gross receipts, as the case may be, in the business is likely to exceed ten lakh rupees, during such financial year.



- (4) The books of accounts referred to in sub-section (1) shall be the following, namely,-
- (a) a cash book;
  - (b) a journal, if the accounts are maintained according to the mercantile system of accounting;
  - (c) a ledger;
  - (d) register of daily inventory of business trading asset;
  - (e) carbon copies of serially numbered bills issued by the person, if the value of the bill exceeds fifty rupees;
  - (f) carbon copies or counterfoils of serially numbered receipts issued by the person, if the value of the bill exceeds fifty rupees;
  - (g) original bills or receipts issued to the person in respect of expenditure incurred by him, if the amount of the expenditure exceeds fifty rupees;
  - (h) payment vouchers prepared and signed by the person in respect of expenditure not exceeding fifty rupees, if there are no bills or receipts for such expenditure.
- (5) The bills or receipts issued to any person shall contain the name, address and such other particulars as may be prescribed.
- (6) The Board may, having regard to the nature of the business carried on by any class of persons, prescribe-
- (a) any other books of accounts and documents to be kept and maintained;
  - (b) the particulars to be contained in the books of accounts and documents; and
  - (c) the form and the manner in, and the place at, which the books of accounts and other documents shall be kept and maintained.
- (7) The Board may prescribe the period for which the books of account and other documents to be kept and maintained under this section shall be retained.

### **Tax audit**

- 84.** (1) Every person, who is required to keep and maintain books of accounts under section 83 shall get his accounts for the financial year audited if,-
- (a) in a case where the person is carrying on any profession, the gross receipts of the profession exceed ten lakh rupees in the financial year; and
  - (b) in a case where the person is carrying on any business, the total turnover or gross receipts, as the case may be, of the business exceed forty lakh rupees in the financial year.

## **Draft Direct Taxes Code Bill 2009**

(2) The audit of the accounts referred to in sub-section (1) shall be performed by an accountant and the report of audit obtained before the due date.

(3) The report of audit referred to in sub-section (2) shall be obtained in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(4) The provisions of sub-section (1) shall not apply to the business where the income there from is determined under Rule 1 of Table of the Fourteenth Schedule.

(5) A person shall be deemed to have complied with the provisions of sub-section (1), if the person -

(a) gets the accounts of his business audited as required by, or under, any other law before the due date; and

(b) obtains by the due date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under subsection (3).

### **Proposals in Direct tax code Bill 2009 relevant to LLP**

#### **Self-reporting of tax bases-Section 148**

Every person shall furnish a return of tax bases before the due date.

The return of tax bases for Limited liability partnership shall be signed and verified by :

(a) designated partner of the limited liability partnership; or

(b) any partner (not being a minor) of the limited liability partnership if there is no designated partner or the designated partner, for any unavoidable reason, is not able to sign and verify the return.

#### **Relevant Definitions in CHAPTER - XVI**

110. **“firm”** shall have the meaning assigned to it in the Indian Partnership Act, 1932 and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008.

191. **“participant”** means,-

(a) a partner in relation to a firm; or

(b) a member in relation to an association of persons or body of individuals;

192. **“partner”** shall have the meaning assigned to it in the Indian Partnership Act, 1932 and shall include,-

(a) a partner of a limited liability partnership as defined in the Limited Liability Partnership Act, 2008; and

(b) any person who, being a minor, has been admitted to the benefits of partnership;

193. **“partnership”** shall have the meaning assigned to it in the Indian Partnership Act, 1932 and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008;

**Which means applicability of the following sections**

**No deduction of tax in certain cases- Section 200.**

No tax shall be deducted from the following:-

(g) any interest payable by a firm to a partner of the firm;

89. **“dividend”** distributed or paid by a company,-

(a) shall include the following, namely:-

(v) any payment by a closely-held company, to the extent of its accumulated profits, if such payment is -

(A) .....

(B by way of advance or loan to any Hindu undivided family, or a firm, or an association of persons, or a body of individuals, or a company (hereafter in this clause referred to as the said concern), in which

such shareholder is a member or a partner or a shareholder, and in which he has a substantial interest; or

**Attachment of partnership property-section 33.**

(1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate.

(2) The Tax Recovery Officer may, by the above order or any subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may become due to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(3) The other persons shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

**Rates of income tax-First Schedule**

In the case of every unincorporated body,-

On the whole of the total income -30 per cent

**Income not included in the total income- Sixth Schedule**

3. Any sum received by a person, being a participant in an unincorporated body, towards his share as per the agreement of association, in the total income of the unincorporated body which is separately assessed.

**Aggregation of losses in case of change in constitution of unincorporated body-Section 62.**

(1) The amount of 'unabsorbed current loss from ordinary sources' calculated under sub-section (4) of section 58, for the financial year ending on the date of the retirement, or death, of a participant, shall be reduced by the amount in proportion of the share of the retired, or deceased, participant.

(2) The amount so reduced under sub-section (1) shall be the ‘unabsorbed preceeding year loss from ordinary sources’, for the financial year beginning on the date immediately following the date of retirement, or death, of a participant for the purposes of sub-section (3) of section 58.

(3) The amount of ‘unabsorbed current loss from the special source’ calculated under sub-section (3) of section 59, for the financial year ending on the date of the retirement, or death, of a participant, shall be reduced by the amount in proportion of the share of the retired, or deceased, participant.

(4) The amount so reduced under sub-section (3) shall be the ‘unabsorbed preceeding year loss from the special source’, for the financial year beginning on the date immediately following the date of retirement, or death, of a participant for the purposes of sub-section (2) of section 59.

(5) The provisions of this section shall apply notwithstanding anything to the contrary contained in any other provision of this Code.

(6) any reference to the ‘unabsorbed preceeding year loss from ordinary sources’ and ‘unabsorbed preceeding year loss from the special source’ in respect of an unincorporated body where a change has occurred in its constitution due to death, or retirement, of its participant, shall be construed as a reference to the amount so reduced under sub-section (1) and sub-section (3) respectively.

#### Interpretation –section 113

“**associated person**”, in relation to a person, means -

....

(c) any participant in an unincorporated body or any relative of such participant, if the person is an unincorporated body;

(f) a company, unincorporated body or Hindu undivided family having a substantial interest in the business of the person or any director, participant, or member of the company, body or family, or any relative of such director, participant or member;

(g) a company, unincorporated body or Hindu undivided family, whose director, participant, or member have a substantial interest in the business of the person; or family or any relative of such director, participant or member;

(h) any other person who carries on a business, if,-

(i) the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or

(ii) the person being a company, unincorporated body or Hindu undivided family, or any director, participant or member of such company, body or family, or any relative of such director, participant or member, has a substantial interest in the business of that other person;

**Assessment of entity formed for a particular event or purpose-section 178.**

(1) An Assessing Officer may, where it appears to him that an unincorporated body formed for a particular event or purpose is likely to be dissolved in the financial year or shortly after its expiry, charge to tax in that financial year the tax bases of the unincorporated body for the period from the beginning of the financial year up to the likely date of its dissolution.

**Assessment of firm in case of change in its constitution-section 180.**

(1) The Assessing Officer shall, in a case where a change has occurred in the constitution of an unincorporated body, make only one assessment in respect of the entire financial year in which the change has occurred.

**Joint and several liability of participants-section 220.**

Every person, being a participant in an unincorporated body during the financial year, or the representative assessee of the deceased participant, shall be jointly and severally liable, along with the unincorporated body, for payment of any amount payable by the unincorporated body under this Code.

**Offences by companies, etc.- section 242.**

(1) If an offence under this Code has been committed by a company then, regardless of anything to the contrary contained in this Chapter, -

(a) such company shall be punished only with a fine; and

(b) every person, who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of its business, shall be punished with imprisonment and fine

(3) The persons referred to above shall not be liable to any punishment if he proves that -

(a) the offence was committed without his knowledge, consent or connivance;

(b) the offence cannot be attributed to any neglect on his part; or

(c) he had exercised all due diligence to prevent the commission of such offence.

(4) Any director, manager, secretary or any other officer of the company shall also be punished with imprisonment and fine, if it is proved that -

(a) the offence was committed with his knowledge, consent or connivance;

(b) the offence can be attributed to any neglect on his part; or

(c) he had not exercised all due diligence to prevent the commission of such offence.

(5) For **the purposes of this section**, -

(a) “company” means a body corporate, and includes —

(i) an **unincorporated body**; and

(ii) a Hindu undivided family; and

(b) “director”, in relation to —

(i) an **unincorporated body** means a participant in the body;

(ii) a Hindu undivided family, means an adult member of the family; and

(iii) a company, means a whole-time director, or where there is no such director, any other director or manager or officer, who is in charge of the affairs of the company.

## **TAXATION OF NON-RESIDENTS UNDER THE DIRECT TAX CODE (DTC)**

### **Determination of residency (Sec.4 of DTC)**

Generally individuals are taxable in the country or tax jurisdiction in which they establish their residence or domicile regardless of the source of income. The residential status of an individual / company plays an important role in determining the tax liability of the person or entity. Under the Direct Tax Code residence based taxation is applied for residents and source based taxation for non-residents. A resident in India will be liable to tax in India on his world-wide income. However, a non-resident in India will be liable to tax in India only in respect of accruals and receipts in India (including deemed accruals and receipts).

1. **Individuals** – Under the Direct Tax Code, the residential status of an individual in a financial year is determined on the basis of his stay in India during the financial year and the earlier years. He would be a resident in India if he is India – (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 -  
(i) sixty days, or more, in that year, and  
(ii) three hundred and sixty-five days, or more, within the four years immediately preceding that year. A person will be treated as a Non-Resident if he is not a resident in India.

2. **HUF, Partnership firms and Association of persons** – A Hindu Undivided Family, partnership firm and association of persons will be resident in India if the control and management of their affairs are wholly or partly situated within India at any time in the relevant financial year.
3. **Company** – An Indian company will always be treated as resident in India. However, a foreign company can either be resident or non-resident in India. It will be treated as resident in India if, at any time in the financial year, the control and management of its affairs is situated wholly or partly in India. Foreign company means a company which is not a domestic company.

### **Scope of Income (Sec.3 of DTC)**

1. **Resident** – Income received by a resident from any source outside India or within India is taxable. Any income that is received by or on behalf of the resident outside India will be included in the total income of the resident regardless of the income being charged to tax outside India or the method for granting relief for the avoidance of double taxation under any Double Taxation Agreement.
2. **Non-resident** – The total income of a non-resident will include any income from any source that has accrued or deemed to accrue in India or that is received or deemed to be received in India.

### **Income deemed to accrue in India (Sec.5 of DTC)**

The following incomes will be deemed to have accrued in India, if it accrues directly or indirectly through or from:

- a. A business connection in India
- b. A property in India



- c. An asset or source of income in India or
- d. The transfer of a capital asset situated in India.

The following income will also be deemed to have accrued in India irrespective of the fact the payment is made outside India, the services are rendered outside India or the source of income has otherwise not accrued in India:

- (a) Income from employment, if it is for—
  - (i) Service rendered in India;
  - (ii) Service rendered outside India by a citizen of India and the income is receivable from the Government; or
  - (iii) The rest period, or leave period, which precedes or succeeds, the period of service rendered in India and forms part of the service contract of employment;
- (b) Dividend received outside India from an Indian company;
- (c) Interest accrued from the Government or any resident;
- (d) Interest accrued from any non-resident, if the interest is in respect of any debt incurred and the debt is used for the purposes of—
  - (i) a business carried on by the non-resident in India; or
  - (ii) earning any income from any source in India;
- (e) Royalty accrued from the Government or any resident;
- (f) Royalty accrued from a non-resident, if the royalty is for the purposes of -
  - (i) a business carried on by the non-resident in India; or
  - (ii) earning any income from any source in India;
- (g) Fees for technical services accrued from the Government or any resident;
- (h) Fees for technical services accrued from any non-resident, in respect of services utilized for the purposes of,—
  - (i) a business carried on by the non-resident in India; or
  - (ii) earning any income from any source in India;
  - (i) transportation charges accrued from the Government or any resident;
- (j) Transportation charges accrued from any non-resident, if the transportation charges are in respect of the carriage to, or from, a place in India.

In case of a business, where all the operations are not carried out in India, the income of the business deemed to accrue in India will be only such part of the income as is reasonably attributable to those operations carried out in India.

**The income deemed to have accrued in India for non-residents will not include the following:**

- (a) Any income accruing through, or from, operations which are confined to the purchase of goods in India for the purposes of export out of India;
- (b) Interest accrued from a resident, in respect of any debt incurred and used for the purposes of,-
  - (i) a business carried on by the resident outside India; or
  - (ii) earning any income from any source outside India;
- (c) Royalty accrued from a resident for the purposes of,-
  - (i) a business carried on by the resident outside India; or
  - (ii) earning any income from any source outside India;
- (d) Royalty consisting of lump sum consideration accrued from a resident for the transfer of any rights (including the granting of a licence) in respect of computer software supplied by a non-resident manufacturer, along with a computer or computer-based equipment, under any scheme approved under the Policy on Computer Software Export, Software Development and Training, 1986 of the Government of India.
- (e) Fees for technical services, accrued from a resident, in respect of services utilized for the purposes of,-
  - (i) a business carried on by the resident outside India; or
  - (ii) earning any income from any source outside India;
- (f) Transportation charges for the carriage by aircraft or ship, accrued from any resident, if the transportation charges are in respect of the carriage from a place outside India to another place outside India.

**Branch Profit Tax (Chapter VII, Section 100 of DTC)**

Branch Profits Tax has been introduced on foreign companies at 15% on net of tax profits. So henceforth every foreign company will be liable to branch profits tax on its branch profits. This rate has been specified in paragraph C of the Second Schedule of the Direct Tax Code.

Branch profits will be the total income for the financial year as reduced by the amount of income tax (corporate tax) thereon.

## **Draft Direct Taxes Code Bill 2009**

The branch profit tax will be in addition to the corporate tax of 25% that needs to be paid by the foreign company.

The liability to branch profits tax should be discharged by payment of pre-paid taxes as if the branch profits tax was income tax.

Some important issues that arise in case of branch profit tax are:

- i. There is no definition of branch or branch profits.
- ii. Whether royalty, interest etc will be covered for determining branch profit tax?
- iii. Whether branch profits tax will apply to all income or only to branch income?

### **Capital Gains**

The income from the transfer of any investment asset will be computed under the head “Capital gains”.

Some important provisions with regard to capital gains that is applicable for non-residents and foreign companies:

1. Transfer of any investment asset situated in India, by an amalgamating or demerged foreign company to the amalgamated or resulting foreign company will not be treated as capital gains if -
  - (i) the transfer is effected under a scheme of amalgamation or demerger, as the case may be; and
  - (ii) the transfer does not attract tax on capital gains in the country, in which the amalgamating or demerged company is incorporated;
2. Transfer of bonds or global depository receipts by a non-resident to another non-resident will not be treated as capital gains if the transfer is made outside India.
3. Capital gains will be taxable at the rate of 30% for non-residents.

### **Double Taxation Avoidance Agreements (Chapter XV of DTC)**

The Central Government has the power to enter into an agreement with the Government of any country for granting relief in respect of income on which income tax has been paid both under

the Direct Tax Code as well as the corresponding law in force in that country and for avoidance of double taxation of income.

A Double Taxation Avoidance Agreement provides for certainty on how and when will income of a particular kind be taxed and by which authority. The right to tax of each country is defined. If one country has the right to tax a certain income, provision is made for the other country to give tax credit or exemption to that income in order to avoid double taxation. Presently India has entered into Double Taxation Avoidance Agreements with about 75 countries. The double taxation agreements are of two kinds: (i) comprehensive DTAA's which cover all kinds of income; and (ii) limited DTAA's which cover only income from shipping and/or air transport.

The right to tax may be allocated to either country by adopting one of the following methods:

- i. Full or partial rights to tax given to the country of residence, and the country of source waiving its right to tax to that extent.
- ii Full rights to tax given to one country based on source or residence and the other country obliged to exempt that income.
- iii. Full rights to tax by both countries, but with the tax in the source country limited to no more than a specified level and the country of residence giving credit for the tax paid in the source country. Thus, there is a sharing of tax revenues between the two countries.
- iv. Full rights to tax by both countries without limitation and the country of residence giving credit for tax paid in the source country.

A person cannot claim relief under the provisions of the Double Taxation Avoidance Agreement unless he obtains a certificate of his being a resident in the other country or specified territory from the tax authority of that country or specified territory in the prescribed form.

In case of a conflict between the provisions of a treaty and the Code, the provision which is later in time will only prevail. There is no specific clause that permits the Treaty to override the Code.

### **Foreign Tax Credit (Sec.206 of DTC)**

A foreign tax credit is used to reduce or eliminate double taxation when the same income is taxed in multiple countries. In order to eliminate double taxation, a tax treaty determines which

of the countries has the primary entitlement to tax that income. The amount of tax normally payable to each country is calculated without regard to the fact that another country may also be taxing it. Then, after the tax has been paid to the primary country, the secondary country will allow the earner to take a tax credit for the amount of tax paid to the primary country, against the tax owed to the secondary country, but only up to the amount of tax paid to the primary country or the amount of tax due to the secondary country, whichever is less. The allowance of the foreign tax credit facilitates taxpayers extending their business operations to other countries because the impact of double taxation would be great and severe on the profitability of such endeavors. The foreign tax credit allows for more open competition between businesses despite their nationality.

**For example** - If a person lives in *Country A*, but has income sourced in *Country B*, he may find that both countries want to tax that income. *Country A* wants to tax the income because they tax the income of their residents. *Country B* wants to tax the income because they tax any income generated within their borders. To eliminate double taxation, the two countries have established a tax treaty saying that the country where the income is generated has the primary claim on the tax, in this case *Country B*. The earner would calculate and then pay tax to *Country B*. Next, he would calculate the amount of tax normally payable to *Country A*, but then reduce that tax by using the foreign tax credit to subtract the amount of tax already paid to *Country B*. *Country A* would only receive any tax if the amount paid to *Country B* was lower than the *Country A* tax, and the tax payable would be the difference between the two amounts. If the *Country B* tax was higher than the *Country A* tax, then there would be no tax paid to *Country A*.

In India an assessee will be allowed a credit in respect of income-tax paid by deduction or any other mode, in any other country under law in force in that country. An assessee who has accrued income outside India during the financial year will be allowed a credit against the Indian income tax payable by him, of the amount determined in accordance with the Agreement entered into with the other country.

In case there is no Double Taxation Avoidance Agreement with the other country, then the amount of income tax will be determined –

- At the Indian rate of tax or the rate of tax of the other country, whichever is lower; or
- At the Indian rate of tax if both the rates are equal.

## **Draft Direct Taxes Code Bill 2009**

Regardless of the provisions mentioned above, an assessee will not be entitled to credit against the Indian Income Tax payable by him respect of the following income:

- The income that is deemed to accrue in India.
- If no agreement has been entered into with the other country in which the income has accrued.

The method for computing the amount of credit, the manner of claiming credit and other particulars that are necessary for the relief or avoidance of double taxation will be prescribed the Central Government.