IMPORTANT ASPECTS OF DTC

By, CA Anil Kumar Rathi

For 50 yrs. we have been inflicted the pain of frequent changes in tax laws, through the various annual, semiannual Finance Act and Judicial verdicts. Income Tax Act 1961 has been considerably revised not less than 34 times. I, remember, once Mr. N. A. Palkhivala had said that I. T. Act is like a Rly. Ticket, good only for one journey, sometimes not even for the whole of a journey. It is a matter of pleasure for us, as all this is set to change because old I. T. Act is going to replace by D.T.C. New Act will take away old concepts and ideas to a large extent. A section of society thinks that DTC is nothing but old wine in a new bottle. It may be correct to some extent, but one has to look at the brighter side of it.

The discussion paper alongwith draft DTC was released in Aug. 2009 for public comments. The DTC 2010 was introduced in Loksabha on 20.08.2010 and referred to the Standing Committee headed by Mr. Yashwant Sinha, former F.M. on 9th Sept. 2010. The Committee had submitted its report and recommendations on 6th March 2012.

The bill consists of 22 chapters, 22 schedules, and 284 sections, whereas present I. T. Act 1961 originally contains 298 sections with various subsections clauses, sub-clauses and explanations. As stand today, it has around 656 sections & clauses and 14 schedules. Interestingly, 1922 Act, which was effective for almost 40 yrs., had only 67 sections. The objectives in brief, behind introduction of DTC, as given by Govt. is as under –

(i) Consolidation and integration of all direct tax laws.
(ii) Simplification
(iii) Stability
(iv) International transaction & taxation
(v) Rationalization of exemptions
(vi) To replace profit linked incentives with investment linked incentive.

Present Status :

Estimations of tax prayers and tax collection is as under –

Slab	Estimated No. of tax payers	Percentage	Tax Collection (in crores)	Percentage
0 – 5 Lakh	288.44 L	89%	15010 Cr.	10.1%
5 – 10 Lakh	17.88 L	5.5%	21976 Cr.	14.8%
10 – 20 Lakh	13.78 L	4.3%	17858 Cr.	12.1%
Above 20 Lakh	4.06 L	1.3%	93229 Cr.	63%
	324.16 L	100%	148073 Cr.	100%

Tax Slab :

In draft DTC, liberal 3 slabs of personal taxation was given but Standing Committee has recommended certain changes.

Proposed in DTC	Recommended by Committee
0 – 10 Lakh - 10%	3 – 10 Lakh - 10%
10 - 25 Lakh - 20%	10 – 20 Lakh - 20%
Above 25 Lakh - 30%	Above 20 Lakh – 30%

Tax rate of 25% for Corporate assessee was proposed in DTC, but rate of 30% is recommended by Committee. Although, in first schedule of DTC, present tax rates are given, but I am hopeful that slab proposed originally will be adopted once the DTC comes into force. You can observe from the data that 89% assessee falls under 0 – 5 lakh category and contributes only 10% of total collection, on the other hand only 1.3% assessee's are filling return above 20 lakhs and contributing 63% of total collection, considering this I am hopeful for further relief in lower tax bracket. Even if Govt. raise the basic exemption limit to 5 lakhs, revenue loss will only be 10% whereas workload will reduce by 89%. Thus there can be effective utilization of resources and this will improve tax administration and management. Critics say that 30% tax rate is high, but one should not ignore rates prevailing in other Countries, i.e. in USA 35%, in France 40% in Germany and China – 45%. A new category of tax on Non Profit Organization is also listed in 1st schedule, accordingly tax @15% on income above Rs. 1,00,000/- is prescribed.

Concept of Financial Year

1st time in the history of Income Tax concept of Financial Year is introduced. Financial year means period of 12 months commencing from 1st April. In the present tax system confusing term of previous year and assessment year is given, this will replace by simple term of Financial Year.

Income & Classification

Section 2(24) of present Act defines word Income, it consist of 16 sub clauses. whereas sec. 284 and other sections like 21, 25, 30, 31, 48 and 56 of DTC refers Income as gross receipts. Income under DTC is classified mainly in following two heads :

1) Income from ordinary sources
2) Income from special source

Ordinary source of income

(1) Income from employment (Salary)

(2) Income from House Property

(3) Income from business

(4) Capital Gains

(5) Income from residuary sources

Special Source of Income

1) Income of Non-resident by way of Dividend, Interest, Profit distributed by MF, Royalti, Fees for technical services, and Income from insurance and reinsurance will be taxed @20%.
2) Income of Non resident by way of income from game, advertisement, contribution of articles relating to any game or sports in newspapers, journals, magazines in India will be taxed @10%.
3) Income of Non-resident sports association by way of guarantee money in relation to any game & / or sports will be taxed @10%.
4) Income of any resident or Non-resident, by way of lottery, crossword, race, card game, gambling or betting will be taxed @30%

Salary Income

The provisions relating to salary income is more or less same, as in the present Act but some positive changes are there in DTC. Tax free limit for medical reimbursement is proposed to raised to Rs. 50,000/- from present limit of Rs. 15,000/-. The exemption limit for retrenchment compensation is also likely to raise to Rs. 5,00,000/- from Rs. 50,000/-. DTC will take away differential, treatment of exemptions presently available to Govt and Non Govt. employees.

House Property Income

Concept of Annual letting value in respect of house property income is replace by term 'Gross Rent' i.e. rent received or receivable, directly or indirectly for the financial year. The gross rent shall be rental income from property let out for full year or part of the year. Properties not let out for any part of the year shall not be taxed on notional value. Statutory deduction for repairs is proposed to reduce from 30% to 20%, it requires reconsideration.

Business Income

Business income under the present Act is based on model of taxable income equal to business profits with specified adjustments. Business income under the DTC will be based on income – expenses model, where the taxable income from business shall be gross earning reduce by deductible business expenses broadly falls under following heads –

1) Operating Expenses
2) Financial Charges
3) Capital Allowances.

There is long list of 44 items of operating expenses. Indirectly FBT is brought back through the disallowance route, one such example is disallowance of contribution to superannuation fund exceeding Rs. 1,00,000/- per year in respect of any employee.

I think this in not in any way going to reduce litigations, hence requires reconsideration.

Capital Gains

DTC propose to levy capital gains on investment assets classified as under –

1) Investment asset held for more than one year from the end of Financial Year in which the asset is acquired.
2) Investment asset held for less than one year from the end of financial year in which asset is acquired.

   Simple meaning of above provision is that deemed acquisition date of investment asset will be 31st March of that year, irrespective of actual date of acquisition. Capital Gains will be taxed as ordinary income at applicable rates. In respect of taxation of transfer of listed equity shares & units of equity fund a deduction of 100% will be allowed under clause 51(1), Investors holding shares as on 31st March 2011 will not be subject to capital gain tax and new base cost for them will be price as on 1st April 2011. In respect of other investment assets i.e. unlisted shares etc. benefit of indexation will be available and cost of acquisition will shift from 01.04.1981 to 01.04.2000. In respect of investment asset held for less than one year capital gain tax shall be applicable at normal rates, a deduction of 50% from short term capital gain is proposed under DTC. Capital asset as defined under clause 314 of DTC means property of any kind other than business trading asset i.e. stock-in-trade, consumable stores, raw material held for business purposes. Business capital asset means

   (i) Self generated capital asset
   (ii) Any tangible capital asset.
   (iii) Building, Machnery, Plant, Furniture, etc. used for business purposes.
   (iv) Any other capital asset not being land.

   Gain arise on above asset will be treated as business income and not as capital gain. In respect of investment asset being land or building, provisions of present section 50-C is retained.

Income from Residuary Sources

Income from residuary sources broadly is on the line of present section 56 and also includes.

i) Receitps of money and any specified property such as shares, securities, jewellery etc. for inadequate or without consideration by an individual or HUF.

ii) Receipt of immovable property without consideration by individual or HUF

iii) Receipt of shares of closely held company for inadequate or without consideration by a firm or a company.

Deductions

There is no much change in saving oriented and health related deductions. New section 69 provides for deduction of one lakh rupees to an individual for amount paid or deposited in approved fund for self, spouse and / or any child of such individual. Other section 70, 71 and 72 provides for consolidated deduction of Rs. 50,000/- to individual and HUF for payment of premium on life insurance policy, but such annual premium should not exceed 5% of sum assured, premium for health insurance and tuition fees to any school, college, university for full time course of any two children. Thus for individuals, deduction of Rs. 1,50,000/- will be available and for HUF deduction of only Rs. 50,000/- will be available. Business related deductions are missing from this chapter and included in schedules.

Corporate Tax

Under the first draft of DTC, tax @ the rate of 25% was proposed for Corporate assessee but revised to 30% by Committee. Similarly MAT was proposed to levy on gross assets of the Company, but reverse back to existing law except rate of MAT is increased to 20% from present rate of 18%.

Taxation of Non-Profit Organizations (NPO)

Chapter IV of DTC deals with taxation of NPO's As per provisions of section 8 total income of NPO in relation to any charitable activity shall be gross receipts as reduced by outgoings, on the basis of cash system of accounting. The gross receipts shall not include any loan amount and voluntary contributions received for corpus fund. Only donations of public religious institution will be exempt from tax subject to fulfillment of certain conditions. Partly religious and partly charitable institutions will also be treated as NPO and income from public religious activities shall be exempt, whereas income from charitable activities will be subject to tax.

Wealth Tax

The Wealth Tax Act 1957 consists of 8 chapters and 47 sections. The wealth tax collection is very poor. During the year 2010-11 it was 682 crores as against Rs. 505 crores in 2009-10, whereas total income tax collection for this period was Rs. 1.45 lakh crore and 1.32 lakh crore respectively. Thus it is evident that contribution of Wealth tax is very negligible. I am of the strong view that Govt. can save much more on administrative and other cost by abolishing Wealth Tax and can provide relief to present Wealth Tax Payers.

Under the Wealth Tax Act 1957 Wealth Tax is chargeable on net wealth over Rs. 30 lakh. The proposed limit under DTC is one crore. The scope of wealth tax is enlarged and every person other than NPO will be liable for WT. The following items which do not attract WT at present, shall be included in taxable wealth.

1) Watch having value of above Rs. 50000/-
2) Deposits of individual and HUF in banks located out of India.
3) Helicopter, not used in business.
4) Equity and preference shares held by a resident in a controlled Foreign Company.
5) Interest in a foreign trust or other body located out of India.
6) Cash in hand above Rs. 2.00 lakh.

The proposed Wealth Tax rate is 1% on net wealth above Rs. one crore, but Standing Committee has recommended basic exemption limit of Rs. 5 crores for Wealth Tax, with following slab -

0 – 5 Cr.	Nil Tax
5 – 20 Cr.	0.5%
20 – 50 Cr	0.75%
50 Cr. and above	1%

Let us pray that Govt. will either abolish Wealth Tax or accept Committees Recommendations.

Conclusion

In my opinion even after DTC-II rethinking is inevitable. Many provisions requires reconsideration. DTC-II is a big document of 405 pages and can not be covered in single session. I have tried my best to cover important aspects briefly. Aspects related to procedural and International taxation is not discussed here. I hope and wish that DTC will not proceed on lines of Companies bill which has under discussion since last 15 years and still not enacted.

Thanks,

CA Anil Kumar Rathi