

Draft Direct Tax Code Bill - 2009

Presentation by :

CA. Kapil Goel, ACA, LLB

Chartered Accountant

9910272806

New Delhi

cakapilgoel@gmail.com

OBJECT/SCOPE

To deliberate upon provisions proposed in new Code vis a vis Assessment Reassessment Appeals Rectification etc (INTERALIA)

**Concept of Assessment Year done away with :
Replaced with Financial year (as stated in Discussion Paper of New Code said change will not impact the existing system of TDS; Advance Tax; Self Assessment Tax etc and is aimed to reduce confusion in compliance and administration)**

New Concept of Tax base

- 275. **“tax bases”** means-
 - (a) income or total income, as the case may be, in relation to income-tax;
 - (b) net wealth in relation to wealth-tax;
 - (c) dividend distributed in relation to dividend distribution tax; and
 - (d) the income or total income, net wealth, or dividend distributed referred to in sub-clauses (a) to (c) of any other person in respect of which the assessee is assessable under this Code

Revenue's Objective in Discussion Paper towards new Code

- *The Code is not an attempt to amend the Income Tax Act, 1961; **nor is it an attempt to "improve" upon the present Act.** In drafting the Code, the Central Board of Direct Taxes (the Board) has, to the extent possible, started on a clean drafting slate. **Some assumptions which have held the ground for many years have been discarded.** Principles that have gained international acceptance have been adopted. The best practices in the world have been studied and incorporated. Tax policies that would promote growth with equity have been reflected in the new provisions. **Hence, while reading the Code, it would be advisable to do so without any preconceived notions and, as far as possible, without comparing the provisions with the corresponding provisions of the Income Tax Act, 1961 (Para 1.7)***

Comparison at a glance

Provisions in new code bill	Comparative provisions in old/present 1961 Act
Return filing - Section 148(1) to (5)	Section 139
Revised return – section 148(6)	Section 139(5)
Belated return – section 148(7)	Section 139(4)
Defective return – section 148(8)& (9)	Section 139(9)
Verification of return – Section 148(10) Table 5	Section 140
Voluntary Return Section 148(11)	Erstwhile provision in 139(10) & SC in Ranchodass 36 ITR 569

Comparison at a glance

Provisions in new bill	Comparative provisions in old 1961 Act
Notice to Non Filer Section 152 Notice to Stop Filer Section 151	Section 142(1)
Section 153 Self Assessment Tax	Section 140A
Return Acknowledgement Section 154	
Return Processing Section 155	Section 143(1)
-Selection of case for Scrutiny Asst Section 156 -Notice for scrutiny assessment Section 157 combining some aspects of section 142 of 1961 Act -Final Scrutiny Asst Section 162	Section 143(2)/Section 143(3); Proviso

Comparison at a glance

Provisions in new bill	Comparative provisions in old 1961 Act
Special Audit Section 158	Section 142(2A)
Determination of Value of Assets Section 159	Section 142A
ALP Determination Section 160 by TPO	
Determination of Impressible Avoidance Arrangement Section 161	No Provision
Best Judgment Assessment 163	Section 144
JCIT/CIT Directions during Assessment Section 164	Section 144A
Dispute Resolution Panel Section 165	Section 144C

Comparison at a glance

Provisions in new bill	Comparative provisions in old 1961 Act
<p>Reopening Assessment section 166</p> <p>166(1) Reasons to be recorded in writing to proceed with reasst. & Service of Reopening Notice on Assessee u/s 166(2)</p> <p><i>Section 166(3) Notice of Reopening shall contain Reasons</i></p> <p><i>Section 166(4) Deemed cases of Escapement of Tax Base – List widened <u>(combined section 153A and 153C cases in 1961 Act)</u></i></p>	<p>Section 147/148</p> <p>Section 148</p> <p>SC GKN Driveshaft/All HC in Mithlesh</p> <p>Section 147 Explanation</p>

Comparison at a glance

Provisions in new bill	Comparative provisions in old 1961 Act
Reopening Assessment section 166	Section 147/148
166(5) Return to reopening notice to be filed within 30 days of receipt of notice	Section 148
<i>Section 166(6) Time Limit for reopening seven years from end of financial year</i>	Section 149 (within six years from end of relevant assessment year)
<i>Section 166(7) Any time reopening notice</i>	<i>Section 150</i>
<i>Section 166(8) Sanction/Approval</i>	<i>Section 151</i>
<i>Section 166(10) Search assessment for Other than Searched Person</i>	<i>Section 153C</i>

Comparison at a glance

Provisions in new bill	Comparative provisions in old 1961 Act
Section 167 Rectification <u>Section 167(3) deemed cases of apparent rectifiable mistake; If no rectification order within 6 months- deemed rejection of rectification application; time limit for order reduced to 2 yrs</u>	Section 154
Notice of Demand Section 168	Section 156
Time limit for assessment completion Section 169	Section 153

Due Date for filing return of tax base u/s 148(1)

- **due date"** means,-
 - (a) in relation to the return of tax bases,
 - (i) the 30th June following the financial year if the person is not a company and does not derive any income from business; or*
 - (ii) the 31st August following the financial year, in all other cases; or*
 - (b) in relation to any other return, the date as may be prescribed for such return

Financial Year clause 109/section 284

109. “**financial year**” means -

(a) the period beginning with the date of setting up of a business and ending with the 31st day of March following the date of setting up of such business;

(b) the period beginning with the date on which a source of income newly comes into existence and ending with the 31st day of March following the date on which such new source comes into existence;

(c) the period beginning with the 1st day of the financial year and ending with the date of discontinuance of the business or dissolution of the unincorporated body or liquidation of the company, as the case may be;

(d) the period beginning with the 1st day of the financial year and ending with the date of retirement or death of a participant of the unincorporated body;

(e) the period immediately following the date of retirement, or death, of a participant of the unincorporated body and ending with the date of retirement, or death, of another participant or the 31st day of March following the date of the retirement, or death, as the case may be; or

(f) the period of twelve months commencing from the 1st day of April of the relevant year in any other case

Return filing u/s 148

- ❖ *Every Political Party (clause 212/sec 284) and Non Profit Organization has to file its return (section 96) mandatorily*
- ❖ *Any person deriving income from special source- liable to pay tax thereon has to file its return mandatorily*
- ❖ *Threshold income has to be checked with reference to:*
 - ❖ *Individual qua Gross Total Income qua income from ordinary sources*
 - ❖ *Any other person (un specified- like HUF) qua Gross Total Income qua income from ordinary sources*
 - ❖ *Wealth tax and Dividend Distribution Tax return combined u/s 148*

Return filing u/s 148

- ❖ *Revised return time limit: 21 months from end of relevant financial year or before asst completion which ever is earlier*
- ❖ *Belated Return: Where no return by due date and no notice u/s 151(1) and 152(1) (for non filer and stop filer)- time limit- 21 months from end of relevant financial year or before asst completion which ever is earlier*
- ❖ *Voluntary return u/s 148(11) can be filed upto 21 months from end of relevant financial year*
- ❖ *Defect removing in return u/s 148- by intimation to assessee – giving time of 30 days*

Notice to Stop Filer and Non Filer u/s 151 & section 152

❖ *Stop Filer u/s 284 clause*

269. "**stop filer**" in relation to a financial year means a person who has not furnished a return for the financial year but has,-

(a) furnished a return for the immediately preceding financial year; or

(b) been assessed for the immediately preceding financial year ;
or

(c) not furnished a return in response to a notice served under section 151 for the immediately preceding financial year;

Notice to Stop Filer and Non Filer u/s 151 & section 152

❖ *Non Filer u/s 284 clause*

181. **“non-filer”** in relation to a financial year means a person,-

(a) who has not furnished,-

(i) a return of tax bases for the financial year; and

(ii) a return of tax bases for two immediately preceding financial years; and

(b) who has not been issued any notice under section 151 in respect of the relevant financial year and two immediately preceding financial years

❖ ***Both u/s 151 & section 152 : Notice to stop filer and non filer within 21 months from end of relevant financial year- then return to be filed within 30 days on notice receipt***

Section 156 Scrutiny Assessment

Selection of a case

- ❖ *Scrutiny to be made in accordance with risk management strategy framed by Board- This information as per section 156(5) shall be absolutely confidential and never revealed to any person*
- ❖ *Department empowered to select the case for scrutiny and Department to communicate the assessee in WRITING for selection of case for SCRUTINY*
- ❖ *WITHIN FOUR MONTHS FROM END OF*
 - ❖ *FINACIAL YEAR IN WHICH RETURN IS FURNISHED*
 - ❖ *FINACIAL YEAR IN WHICH RETURN IS TREATED AS INVALID*
 - ❖ *FINANCIAL YEAR IN WHICH NOTICE OF SECTION 151/152 WAS ISSUED*
- ❖ *No return – Scrutiny assessment possible where:*
 - ❖ *Section 148(9) applied – return becoming non est due to non removal of defect*
 - ❖ *No return filed u/s 151/152 – stop filer and non filer*

Section 157 Scrutiny Assessment Notice Service

- ❖ *NOTICE FOR SCRUTINY ASSESSMENT POSSIBLE WHERE*
 - ❖ *CASE SELCED UNDER SECTION 156*
 - ❖ *CASE IS REOPENED U/S 166*

SERVICE OF NOTICE FOR MAKING SCRUTINY ASSESSMENT MUST U/S 157 (1)

WHETHER COMUNICATION OF SELECTION U/S 156 IS DIFFERENT FROM SERVICE OF NOTICE U/S 157? IN HOW MUCH TIME AFTER REOEPNING U/S 166, SERVICE OF NOTICE CAN BE MADE U/S 157?

SECTION 157(3): FOR OBTAINING FULL INFORMATION IN RESPECT OF TAX BASE OF ANY PERSON: AO EMPOWERED TO MAKE ANY ENQUIRY AS CONSIDERED NECESSARY

HERE INFORMATION EARLIER REQUISITIONABLE U/S 142 IS CLUBBED U/S 157 (VIZ FOR INFORMATION OF ACCOUNTS FOR EARLIER PERIODS AND ON ASSETS AND LIABILITES)

Section 159 Valuation Officer Gamut

- ❖ *Section 142A: ONLY invocable where there is REQUIREMENT FOR ESTIMATE – EXPLAINED BY LUCK ITAT IN VIJETA EDUCATIONAL AND DELHI ITAT IN SEEMA GUPTA AND RAJESHWAR NATH ETC*
- ❖ *HOWEVER SECTION 159 BLANKET POWER TO AO TO REFER TO DVO ...ONLY SAFEGUARD IS REFERENCE ALLOWED FOR PURPOSES OF ASSESSMENT....REFER GUJ HC IN MANJUSHA ETSTATE...ASST MUST BE PENDING....*
- ❖ *SECTION 142A DID NOT INCLUDED SECTION 69C – EXPENDITURE ESTIMATE – INLCUDED IN SECTION 159*
- ❖ *VALUATION OFFICER WOULD HEAR ASSESSEE BEFORE MAKING VALUATION ORDER AND BEST JUDGMENT VALUATION POWER AVAILABLE IN CASE ASSESSEE DO NOT COOPERATE- binding on AO unlike section 142A*
- ❖ *VALUATION OFFICER EMEPOWERED TO ENTER & INSPECT LAND BUILDING, ASSET OCCUPIED BY ASSESSEE OR ASSET FOR WHICH REFERENCE IS MADE*

Section 160 Determination of ALP by TPO

- ❖ *TPO may select any international transaction for determining its ALP in accordance with risk management strategy framed by Board*
- ❖ *TPO to communicate its decision for selection of international transaction scrutiny to Assessee within 2 months from financial year end in which report of accountant is furnished or information is recd by TPO*
- ❖ *TPO to send aforesaid communication copy to AO within 7 days from date on which communication is sent*
- ❖ *Final ALP Determination to be made within 42 months of end of financial year in which international transaction is entered into*

Determination of Imperssible Arrangement u/s 161 by CIT

- ❖ *CIT empowered to serve on assessee notice for determining consequences u/s 112*
- ❖ *Order u/s 161 to be passed by CIT within 12 months from month end in which notice is issued under section 161(1)*
- ❖ *Service of notice must for making order u/s 161*
- ❖ *Consequences to be determined by CIT in light of section 112*
- ❖ *Directions as necessary; appropriate and consistent may be issued by CIT to AO for making adjustment in Income of assessee*

Final scrutiny assessment order u/s 162(1)

- ❖ *Welcome clarification in statute as to back material must be confronted to assessee before being used in assessment*
- ❖ *AO to follow TPO; Valuation Officer and CIT orders u/s 159; 160; 161*
- ❖ *Draft order must in every case where variation is Rs 25 lack and more.....further to which Assessee is free to file objections to variations proposed in draft order within 30 days to AO and Dispute Panel (refer section 165 for Dispute Resolution Panel Directions Procedure)*
- ❖ *Dispute Panel to resolve dispute between AO and Assessee-
Directions of Panel biding on AO- Appeal to ITAT by assessee possible in pursuant to order passed after panel directions*
- ❖ *If variation accepted by Assessee, whether appeal possible to CIT-Appeals?*

Directions by CIT & JCIT u/s 164

- ❖ *Only JCIT reference can be made by AO and suo motto invocable by JCIT*
- ❖ *Further CIT also empowered to issue directions unlike section 144A in 1961 Act on motion by JCIT whereby JCIT is to issue directions to AO; Also CIT can issue directions suo motto*
- ❖ *Opportunity of hearing to assessee must before any prejudicial directions are given*
- ❖ *Directions binding on subordinate authorities*

Reopening of Assessment u/s 166

- **“reassessment”** means any assessment of tax base in pursuance to a notice issued under section 166, whether or not,-
 - (a) a return of tax bases has been filed before, or after, the issue of the notice; or
 - (b) an assessment of the tax base has been made before the issue of this notice

Landmark change – earlier proviso giving protection from reopening after 4 yrs done away with

Deemed cases of escaped assessment- new entries:

- a) Orders of ITAT/NTT/High Court/Supreme Court – with which earlier assessment order u/s 162/163 (regular/Best judgment) is not in in conformity
- b) Contrary CBDT directions etc with which earlier assessment order u/s 162/163 (regular/Best judgment) is not in in conformity

Reopening of Assessment u/s 166

Deemed cases of escaped assessment- new entries:

- c) Inconformity vis a vis CAG Audit Objection
- d) Inconformity vis a vis available instructions/directions of higher authorities not considered by AO at time of earlier assessment

■ Earlier provisions of search based assessments in 153A/153C included u/s 166 considered in new law as deemed escapement Cases

- i) Where search has been conducted u/s 139 or requisition u/s 140
- ii) **Where any material being SEIZED HAS A BEARING ON DETERMINATION OF TAX BASE OF PERSON OTHER THAN SEARCHER PERSON**

IN ABOVE SEARCH BASED CASES: SEVEN YEARS AUTOMATIC REOPENING BEING PRECEDING TO FINANCIAL YEAR IN WHICH SEARCH TAKEN PLACE OR MATERIAL HAS BEEN OBTAINED

Reopening of Assessment u/s 166

- In case of Other person (Person other than searched person)
- *(10) The provisions of this section/166 shall also apply in the case of any other person, as if a search and seizure operation has been carried out under section 139 in his case, **if any material which has a bearing on the determination of the tax bases of such other person, has been-***
 - (a) seized in the course of search and seizure under section 139 in the case of the person referred to in clause (d) of sub-section (4); or*
 - (b) obtained in pursuance to the requisition under section 140 in the case of the person referred to in clause (d) of sub-section (4).*

SEEMS TO BE VERY WIDE AND UNBRIDLED AS AUTOMATIC REOPENING FOR DEEMED ESCAPED IN COMARISION TO EARLIER PROVISIONS IN SECTION 158BD AND PRESENT SECTION 153C

Reopening of Assessment u/s 166

- In case of Other person (Person other than searched person)
- *(10) The provisions of this section/166 shall also apply in the case of any other person, as if a search and seizure operation has been carried out under section 139 in his case, if any material which has a bearing on the determination of the tax bases of such other person, has been-*
 - (a) seized in the course of search and seizure under section 139 in the case of the person referred to in clause (d) of sub-section (4); or*
 - (b) obtained in pursuance to the requisition under section 140 in the case of the person referred to in clause (d) of sub-section (4).*
- 168. **“material”** includes any books of account, document, money, bullion, jewellery or other valuable article or thing;

Reopening of Assessment u/s 166

■ Explanations: u/s 166

- a) *date of initiation of search, or the date of obtaining the material under subsection (9) to sub-section (11) shall be construed as reference to the date of receiving the material by the assessing officer having jurisdiction over such other person;*

- (b) *reassessment shall include any other part of the tax base liable to tax which has escaped assessment and which comes to the notice of the assessing officer subsequently in the course of reassessment proceeding regardless that the fact of such part of the tax base having escaped assessment has not been included in the reasons recorded for re-opening under sub-section (1); and*

- (c) *reopening a case for reassessment shall include opening a case for assessment where return for a tax base has not been furnished before the issue of notice under sub-section (2).*

DOCTRINE OF PARTIAL MERGER AS THERE IN SECTION 147
PROVISO APPARENTLY NOT WATCHEABLE ?

Rectification u/s 167

- Who can amend: Any Income Tax Authority
- What can amend : Mistake apparent from record (intimation also amendable)
- Time Limit for order: two years from end of financial year in which order sought to be amended was passed
- Deemed apparent mistakes:
 - Order not in accordance with SC/Jurisdictional HC order subsequent to original order
 - Original order not in accordance with subsequent amendment in code
 - Original order not in accordance with DIRECTION etc passed in case of assessee for any financial year – in orders of appellate/revisional authority; other authority order having bearing on liability under this code
 - Original order not in accordance with finding contained in order of other assessee for any financial year passed by any Income Tax Authority

Application for rectification un-disposed for six months- deemed rejection

- Section 167(8) – Prescribed cases of Rectification

Comparison at a glance- Appeals & Revision

Provisions in new code bill	Comparative provisions in old/present 1961 Act
Section 183 – Appeal to CIT-A- Appealable orders	Section 246A;
Form of appeal and limitation- section 184	Section 248
Procedure in Appeal- Section 185	Section 250
Powers of CIT-A Section 186	Section 251
ITAT Section 187	Section 252
Appeals to ITAT- Orders appealable- section 188	Section 253
Stay by ITAT Section 189	Section 254(2A) Provisos & section 253(7)

Comparison at a glance- Appeals & Revision

Provisions in new code bill	Comparative provisions in old/present 1961 Act
Procedure before ITAT Section 191	Section 255
Appeals to NTT Section 192(High Court No appeal provision)	Section 260A Appeal to High Court
Supreme Court Appeals – Section 193	Section 261/262
Revision by CIT Section 194 Prejudicial orders to revenue	Section 263
No provision	Section 264 Revision by CIT on assessee's behest

Apparent New points for CIT- Appeals

- No specified order list unlike earlier provision in present section 246A of 1961 Act- In new code- all orders passed (except interim orders) by authorities below CIT Appealable including Intimations
- Delay in Appeal filing - Condonation for maximum of 1 year
- Appeal against rectification deemed rejection order within 30 days of date on which six months expired
- Unclear provision u/s 184:

“(4) The appeal filed by the Commissioner under section 183 shall be presented within three months from the end of the month in which the assessment order, to which the appeal relates, is passed”

New points for CIT-Appeals

- Section 185 (5) The Commissioner (Appeals) may, during the proceedings before him, direct the Assessing Officer to make inquiry and report the result of the same to him on such points **arising out of any new question of fact or law.**
- Section 186 (2) The Commissioner (Appeals) may consider and decide any matter which was not considered by the Assessing Officer.

New points for CIT-Appeals

- **From discussion paper : extract:**
- An assessee may file an appeal to the Commissioner (Appeals) against the modified order or the fresh order passed by the Assessing Officer
- No appeal shall lie to the ITAT against an order of the Commissioner directing revision of an assessment order. An assessee aggrieved by such an order of the Commissioner may take all the grounds in his appeal to the Commissioner (Appeals) against the modified order or fresh order passed by the Assessing Officer including the ground that the Commissioner exceeded or erred in the exercise of his jurisdiction in revising the order of the Assessing Officer

Constitutional Remedy of Writ & SLP

■ From discussion paper : extract:

21.5 The power of the High Court under Article 226 of the Constitution and of the supreme Court under Article 32 of the Constitution is not affected. The power of the Supreme Court to entertain a Special Leave Petition under Article 136 of the Constitution is also not affected.

Deemed cases of Revision by CIT Section 194(8)

an order passed by an income-tax authority shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if -

(a) the order is passed without making inquiries or verification which, in the opinion of the Commissioner, should have been made;

(b) the order is passed allowing any relief without probing into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 133;

(d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by, -

(i) Appellate Tribunal, National Tax Tribunal, High Court or Supreme Court in the case of the assessee or any other person under this Code, the Income tax Act, 1961 or the Indian Income-tax Act, 1922; or

(ii) a court under any other law; or

(e) the order has been made following the order of a jurisdictional High Court or the National Tax Tribunal but a special leave petition has been granted by the Supreme Court against the said decision of the High Court or the National Tax Tribunal subsequent to the passing of the order

Deemed cases of Revision by CIT

Non Revisional Cases:

Section 194 (9) An order passed by an income-tax authority shall not be considered to be erroneous in so far as it is prejudicial to the interests of the revenue, if -

(a) the order has been made adopting one of the courses permissible in law; or

(b) the order has been made by holding a view sustainable in law regardless of The existence of another view sustainable in law to which the Commissioner is in agreement.

Thank You

CA.KAPIL GOEL

9910272806

cakapilgoel@gmail.
com