

The slide features a decorative arrangement of six light purple circles. Three circles are positioned in the top row, and three are in the bottom row. The circles are of varying sizes and are partially overlapping. The text is centered horizontally and partially overlaid by these circles.

India – Direct Tax Code 2009

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Roadmap to introduction

- Discussion paper in August 2009
- Direct Tax Code Bill presented
- Finance Minister in Budget Speech 2010 says DTC will be implemented from the next year

Highlights of the DTC



- Composite law, consolidating
 - Income tax
 - This includes gift tax on the recipient
 - Wealth tax
 - MAT does not remain; however tax based on gross assets of companies introduced
 - Branch profits tax in case of foreign companies
- Broad scheme of taxability largely remains the same:
 - Tax on global income in case of residents
 - Indian income in case of non-residents
- Dividend distribution tax stays

Merits of DTC over the earlier law

- Sections have been cleaned up, serialised, instead of the earlier numbers like 80QQA and 115JJA
- Opportunity to introduce certain new concepts and definitions

Heads of income



- **Income from ordinary sources**

- Income from employment
- Income from house property
- Income from business or profession
- Capital gains
- Residuary incomes

- **Income from special sources**

- Certain India-connected incomes in case of non-residents
- Winnings from lotteries etc in case of residents

Expenditure not allowed – sec 17// 18

- Sec 56 (2) (o) deals with expenses for which explanation is not satisfactory
- This is treated as deemed income, and disallowed as expense
 - Not double taxation, but taxed as income
- Also, current provisions about expenditure where TDS not deducted get strengthened
 - The benefit of deduction gets permanently lost if TDS not paid within 2 years



Income from employment

- Largely the scheme is the same as under existing law
- The word “salary” defined



Income from house property

- Income from house property defined as
 - Contractual rent or
 - Presumptive rent, whichever is higher
- Presumptive rent shall be 6% of the value determined by local authority, or where no such value fixed, cost of construction/acquisition
- This would mean income from all properties taxable unless
 - Property used for business
 - Property not ready for use
 - One house for self use
- In case of self-use properties
 - Very confusing provision in sec. 25 (5) – any other benefit derived by the owner



Income from business

- Detailed provisions defining what is separate business
 - these provisions affect provisions dealing with set off of inter-business losses
- Deeming provisions if the location of the business is physically in a different place
 - Strictly, this would mean every unit of a business is a separate business
- Deemed incomes
 - Interesting additions such as security deposit or other advance for long term lease of a business or interest in a business
 - Payments made in cash [current sec 40A (3), 1961 Act] taken as income instead of disallowed expense

Deductions against business income

- Broad classification into 3 classes
 - Operating expenses
 - Financial expenses
 - Capital allowances
- Operating exps – sec 33
 - Besides condition of laying out “wholly and exclusively for the business”, law makes a big blunder of listing out exps that are allowable
 - Hence, by default, anything that does not fall under the list is not an allowable expense
 - Huge effort and litigation will go in interpretation of the clauses of the section to find out whether a particular exp falls within the list or not
 - Surprisingly enough, after listing out 42 items, the 43rd item is – any other expense

Financial charges – sec 34

- Apart from cost of money borrowed or trade credit etc., proportionate discount on issue or premium on redemption of bonds is specifically made allowable
- Unfortunately, interest on debt incurred for capital assets not allowable as exps until the asset put to use – sec. 34 (2) (a) (ii)
 - Interest required to be capitalised
 - Contrary to accounting rules
- Exps on bond issuance also not allowable
- Payment of interest to “permitted financial institutions” is allowable only on cash basis
 - Interest converted into loan deemed not to have been paid

depreciation



- Partial ownership of an asset specifically permitted for depreciation purposes
- In case of financial leases, lessee to claim depreciation
- Unlike existing provisions, block value to continue to give depreciation even if the block has ceased to exist – in this case terminal depreciation (not short term capital loss)
 - Likewise, profit on sale of depreciation assets treated as business profit and not capital gain
- Depreciation
 - Initial depreciation – 20%, halved if the asset is used for less than 180 days
 - Allowed in case of plant and machinery
 - Allowed only to actual user; not applicable in case of leasing
 - Normal
 - Terminal – where block has ceased to exist or block value is zero

Capital gains



- Gains on transfer of any “investment asset” will be capital gains
 - Business capital assets are not investment assets; their gains/losses will be a part of business income
- Distinction between long term and short term capital gains seemingly is going away for the purpose of set off
- However, inflation indexing is permitted for any capital asset more than 1 year from the end of the financial year in which it is acquired



Income from residual sources

- Every other income falls under this head
- Specific inclusions for the following:
 - Unexplained incomes or investments also taken as residual income
 - Loans taken in cash exceeding Rs 20000
 - Self generated assets – generic provision as against only specified assets as of now
 - All gifts other than those from relatives, marital gifts, testamentary gifts or in contemplation of death

Carry forward of profits for closely held companies

- Benefit of carry forward of losses not allowed in case of closely held companies unless at least 51% of voting power remains in the hands of the same persons

A decorative graphic consisting of six circles arranged in a horizontal line. The first circle is solid light purple and contains the text 'Wealth tax'. The second circle is hollow with a light purple outline. The third circle is solid light purple. The fourth circle is hollow with a light purple outline. The fifth circle is solid light purple. The sixth circle is solid light purple.

Wealth tax

- 0.25% wealth tax proposed on gross assets of a company, if exceeding Rs 50 crores

Fair value based disallowance provisions

- Sec 104 introduces a disallowance provision, to disallow either capital or revenue expense
 - If payment made to associated person
 - Even if payment is not made to associated person
 - If unreasonable or excessive based on fair market value
 - Based on legitimate needs of the business of the person
 - Benefit derived therefrom
- In other words, in case of every expense, the onus of proportionality and reasonability thrown on the tax payer

General anti avoidance provision – sec 112

- This is a general anti avoidance rule (GAAR)
- Transactions can be disregarded, steps may be combined, or transactions may be recharacterized to find if they are impermissible avoidance transactions
- Several rules have been laid out on powers of tax officers
- Impermissible avoidance transaction:
 - creates rights, or obligations, which would not normally be created between persons dealing at arm's length;
 - results, directly or indirectly, in the misuse, or abuse, of the provisions of the Code;
 - lacks commercial substance, in whole or in part; or
 - is entered into, or carried out, by means, or in a manner, which would not normally be employed for bonafide purposes;
- Sec. 114 contains a deeming provision, throwing the entire onus on the tax payer to prove
 - Everything is avoidance, unless proved that tax benefit was not the purpose of the transaction