Petroleum Federation of India

Suggestions on Amendments to Direct Taxes Code Bill 2010

February 07, 2011

I. Residential Status

Sl. No.	Chapter of DTC	Clause DTC	Provisions of DTC	Changes Suggested	Brief reasons for the suggested change
1.	Chapter –II Basis of charge	Clause 4 (3) Residence in India	As per the provisions of clause 4(3), a foreign company shall be resident in India if its place of effective management, at any time in the year, is in India. Clause 314 (192) defines place of effective management to mean (i) the place where the board of directors of the company or its executive directors make their decisions; (ii) In case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive director or officers of company perform their functions.	1. Considering the proposed introduction of detailed CFC provisions in the code, the proposed definition may be dropped and the definition under the current law may be retained. 2. Alternatively - a) The commercial decisions should not be criterion for determining the residential status of a company and hence should be omitted from the definition of place of effective management. b) Similarly, the term 'Executive Directors/ Officers' to be defined to include specific category of people e.g. MD,	The term 'commercial' is too general and could refer to every single decision regarding routine matters and could be subjected to unnecessary litigation.

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				CFO, CEO, COO, etc. to avoid virtually an entire organization being taken into account for determining where the control and management of the company lies. c)Cases of decisions taken in pursuance of specific delegation, would not be indicative of residence and thus needs to be specifically excluded 3.For effective management, one of the following definitions may be adopted: a)"the place of effective management of the company means the place where the board of directors of the company makes the majority of its key management decisions that are necessary for the conduct of the company's business as a whole." b)"The place of effective management will ordinarily be the place where the most	The definition of place of effective management as contained in DTC could result in a company having a place of effective management virtually in every location where the company has executive directors or officers. An entity may have more than one place of management, but it can have only one place of effective management at any one time. The phrase "at any time in the year" means a single board meeting in India would make the Company to have POEM in India. Clause (ii) is open to many interpretations: what is routinely? Certain commercial decisions on the basis of a particular threshold may be delegated to the officers of a company. Such decisions may also be strategic to the place where the officers are functioning. These decisions may thereafter be approved by the Board. Would this shift the POEM to the place where the project is undertaken as also in cases of shipping and airlines to the place where the PE is in existence? It is therefore suggested that the POEM not be a place

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				senior person or group of persons (e.g. a board of directors) makes its decisions for the conduct of company's business as a whole or the place where the actions to be taken by the company as a whole are determined. Where a board of directors formally finalizes and/or routinely approves key management, commercial and strategic decisions necessary for the conduct of the entity's business in one State but these decisions are in substance made in another State, the place of effective management will be in the latter State. In determining the place where a decision is in substance made, one should consider the place where advice or recommendations or options relating to the decision were considered and where the decision was ultimately taken".	where just day to day management decisions are taken for a part of the company but where decisions for the company as a whole are taken.

II. Computation of Income and Tax Liability

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1.	Chapter III- Computation of Total Income Part II.C – Income from Business	Clause 32(2) read with the Eleventh Schedule	Rule 8 of Eleventh Schedule inter alia states that unless the context otherwise requires (a) 'business of mineral oil or natural gas' means any business consisting of the prospecting for or extraction or production of mineral oil or natural gas; (b) 'mineral oil' means crude oil, being petroleum in its natural state before it is refined or otherwise treated but from which water and foreign substances have been extracted; (c) 'natural gas' means any subsoil combustible gaseous fossil fuel;	The terms "mineral oil" and "natural gas" should not be defined separately. The definition of mineral oil should be an inclusive definition and should be amended to include petroleum and natural gas. Alternatively, the definition may be amended to include 'hydrocarbons' Alternatively, the definition of mineral oil should be linked to the definition as contained in The Oilfields (Regulations and Development) Act, 1948 (ORDA)	The proposed definition of "mineral oil", which is a standard term used in the oil and gas industry has no relation with definition under the relevant statutes or the PSC. Also it is not very clear whether condensate is covered in the existing definition. Mineral oil is defined to mean "petroleum and natural gas" in the relevant statute, whereas DTC proposes to define mineral oil to mean crude oil and has delinked natural gas from mineral oil. It needs to be understood that crude oil and natural gas are actually different forms of the same substance and the two cannot be delinked from each other. Considering these terms have been defined separately only under DTC, a lot of practical difficulty will be created which will make taxation of such businesses unmanageable. Hence, the definition of mineral oil should be derived from the ORD Act, which defines "mineral oil" as "includes natural gas and petroleum". ORD Act and the rules made thereunder make provisions for regulation of petroleum operations and grant of licenses and leases for exploration, development and production of petroleum in India. DTC acknowledges the ORD Act in the definitions of oil and gas rights. The PSC and Contract for Exploration and Production of Coal Bed Methane (CBM Contract) entered between Government of India and operators are regulated under the ORD Act. Any deviation of the definitions from the ORD Act may have significant implications on the existing PSC and CBM Contracts and create avoidable / unnecessary

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				Further in clause (a) 'refining of mineral oil' should also be included. "	litigations. Under the existing provisions of circular 57 dated 23rd March 1971, business of refining of crude oil regarded as business of manufacture or production of mineral oil. This is also in line provision of section 80IB of Income Tax Act, wherein in respect of production of mineral oil, refinery has also been included therein. In absence of this benefit many projects may become unviable.
2.	Chapter III- Computation of Total Income Part II.C – Income from Business	Clause 32(2) read with the Eleventh Schedule	The following inter alia are deductible while computing the profits of business of mineral oil or natural gas: • Capital expenditure incurred by the assessee; • Expenditure on purchase, lease or rental of land or land rights; • Expenditure on any license charges, rental fees or other charges, if actually paid.	Should be clarified that expenditure incurred for purchase/acquisition of whole of, or part of or any interest in, mineral oil or natural gas rights would be deductible under Rule 3 of the Eleventh Schedule.	In the business of mineral oil and natural gas, it is common practice for entities to transfer / purchase rights in mineral and natural gas blocks. Absence of clarification in this regard would give rise to avoidable/ unnecessary litigation.
3.	Chapter III- Computation of Total Income Part II.C –			As per current provision of section 42 of the Act, Production Sharing Contract (PSC) supersedes provisions of Income Tax Act to give	This will go against the Sovereign promise made under the NELP / CBM Policy under which the blocks are awarded by the Government till date

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	Income from Business			effect to the terms of PSC. This should be reinstated	
4.	Chapter III- Computation of Total Income Part II.C – Income from Business	Clause32(2) read with the Rule 7 of Eleventh Schedule	The provisions of Eleventh Schedule shall apply to the business referred to in rule 1, which fulfills all the following conditions, namely:- (a) it is not set up by splitting up, or the reconstruction, of a business already in existence; (b) it is not set up by the transfer to the specified business of machinery or plant previously used of any purpose.	This entire clause should be deleted as even under section 42 the benefit of allow ability of capital expenditure in the year incurred was available. There is no need to curtail the benefit if the conditions prescribed are not satisfied. Alternatively, it should be clarified that it does not apply to business restructuring including farm-in and farm-out of interest in mineral oil and natural gas rights. Clause (b) should be deleted.	In the oil and gas industry, most of the large entities have multiple oil and natural gas rights. This being a high risk industry, the entities often restructure their holdings through mergers / demergers, farm-in and farm-out of their interest, in order to manage portfolios and risk optimisation. Absence of clarification in this regard would give rise to avoidable/ unnecessary litigation. As such exploration activity requires huge investment without any certainty on returns. Such provisions read with clause 31 (which would consider all the blocks as separate & distinct business) would make investment in E&P sector in India totally unattractive to the investors.
5.	Chapter III – Computation of total Income - Part II. C - Income from business	Clause 30 Income from Business	Clause 30 deals with the provisions relating to computation of income from business. Sub-clause (2) provides that income from each business shall be computed separately. Clause 31 provides the parameters to ascertain 'distinct and separate business'.	• Clause 31 should be done away with as this provision would result in unnecessary compliances and would cost to the assessee with no benefit to either the revenue or to the tax payers. • Alternatively, it should be	• It has been provided that income of distinct and separate business shall be computed separately. Different parameters have been provided to ascertain 'distinct and separate business'. • Oil Refineries/ Pipeline units/ State Offices/ Lube Blending Plants/ Petrochemical business/ Production blocks are located at physically different locations.Treating these units as distinct and separate business would create administrative difficulties would

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			Distinct and separate business 31. (1) A business shall be distinct and separate from another business if there is no interlacing, inter-dependence or unity embracing the two businesses. (2) A business shall be deemed to be distinct and separate from another business, if- (a) the unit of the business is processing, producing or manufacturing the same goods as in the other business and such unit is located physically apart from other unit; (b) the unit of the business is producing, processing or manufacturing the same goods as in the other business and utilizes raw material or manufacturing process, which is different from the raw material or the manufacturing process of the other unit; (c) separate books of account are maintained or capable of being maintained, for such business ; or	clarified that deeming parameters are to be seen cumulatively and not individually. • Alternatively, clause 31 of DTC may amended to clarify that where an assessee is engaged in the prospecting for or extraction or production or refining or distribution of mineral oil or natural gas, then, notwithstanding anything to the contrary contained in this Code, such business shall be considered as one distinct and separate business comprising of all the areas licensed or leased to the assessee for exploration and/or extraction/production of mineral oil or natural gas, including all areas in which the assessee has any right or interest, as well as of all the processing/refining units,	result in unnecessary compliance and cost to the assessee with no benefit to the revenue. • These provisions may be suitably amended to remove the ambiguity and unnecessary costs in enforcing compliance with no real benefits. • Eventually, profits from all business are to be aggregated (except specified business which enjoys incentive) despite separate business income computation. There does not seem any rationale to compute business income for each business separately because profit or loss of each business shall be aggregated and shortfall, if any shall be carried forward to next year. • This entail compliance hurdles in computing the separate income for each distinct and separate business like: – Allocation/apportionment of common costs; – Recording of inter business transactions; – Potential administration / monitoring costs for maintenance of separate records, etc.

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			(d) it is a business in respect of which profits are determined under sub-clause (2) of clause 32. (3) Speculative transactions carried on in the nature of a business ('speculative business') shall be deemed to be distinct and separate from any other business.	power generation/transmission/distribution units, and ancillary, incidental or supporting units and/or facilities; • Phrase 'capable of being maintained' should be deleted from clause 31(2)(c) of DTC	
6.	Chapter III-Computation of Total Income Sub-Chapter D – Income from Business	Clause 32(2) read with the Fourteenth Schedule	Rule 2 of the Fourteenth Schedule provides that - the amount of income determined under Rule 1 shall 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 in that sub-clause. The Fourteenth Schedule gives an option to assessee to follow the presumptive income scenario or to follow net income basis by maintaining books of account and getting them audited.	Rule 2 of the Fourteenth Schedule does not seem to serve any purpose, rather creates an ambiguity. It should be removed.	There does not seem any rational behind the above rule. This seemingly suggest that excess of actual income over the presumptive income shall also be taxable. It is unclear that if assessee would opt for presumptive income basis, then how rule 2 can be enforced, especially where no books of accounts shall be maintained.
7.	Chapter III – Computation of	Clause 33 Gross	1. Clause 33 provides the list of earnings to be included for the	• Considering the fundamentals of taxing	• Taxing capital receipts as income and not allowing capital expenditure would go against the principle of

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	Total Income - Part C Income from business	Earnings	purpose of computing profits from any business. It seemingly covers capital receipts within the ambit of business receipts like; • the amount of, remission or cessation of any liability by way of loan, deposit, advance or trade credit; • any amount accrued or received on account of the cessation, termination or forfeiture of any agreement entered in the course of the business However, claim of any capital expenditure while computing income from business is specifically prohibited. 2. Clause 33(2)(vi) of DTC excludes from gross earnings, the amount of cash assistance, subsidy or grant **to meet any portion of the cost of any business capital asset** 3. Clause 33(2)(xx) of DTC inter alia includes in gross earnings the amount received whether as an advance, security deposit or	incomes, the proposal to tax capital receipts should be removed. **Alternatively,** • The DTC should allow deduction of all expenditure (whether capital or revenue) other than the expenditure on which depreciation is to be allowed. This would bring parity in the DTC in respect of treatment of receipts and expenses. (e.g.: There is no provision for allowability of loan, deposits or advances written off by the assessee) Similar exclusion should be inserted for other sub-clauses of Clause 33(2) such as in sub-clause (xix) (amount received on termination or forfeiture of agreement) Clause 33(2)(xx) and Clause 35(2)(xliii) of DTC	equity

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			otherwise, from long term leasing or transfer of any business asset or interest in business asset. Clause 35(2)(xliii) allows deduction of repayment of such advance, security deposits etc.	may be deleted.	
8.	Chapter III – Computation of Total Income - Part C Income from business	Clause 33(2) Gross Earnings	Clause 33 provides the list of earnings to be included for the purpose of computing profits from any business. Clause 33(2)(xxi) includes in the gross earnings, the amount received as reimbursement of expenses incurred (on behalf of some other person).	It is recommended that reimbursement of expenditure incurred on behalf of other should not be brought to tax as the same does not represent 'income' of the assessee Alternatively, expenditure incurred on behalf of other person which is reimbursed should also be allowed to bring equity	Expenditure are sought to be allowed only if they are laid out or expended wholly and exclusively for the purposes of the business. The amount of expenditure incurred on behalf of other person and received as reimbursement should specifically be clarified to be deductible. Absence of clarification in this regard would give rise to avoidable/ unnecessary litigation. Also,the practice of cost sharing arrangement will become tax inefficient.
9.	Chapter III – Computation of total income Part C – Income from business	Clause 41(1) Deduction for scientific research and development allowance	Clause 41 of DTC provides for a weighted deduction of 200% incurred on creating, maintaining and developing in house scientific research facility.	• There is no provision for weighted deduction of 175% for outsourcing scientific research to R&D companies, as provided under Section 35(1) of the current Income Tax Act • Such provisions should be introduced.	This would boost outsourcing of scientific research to professional research companies which can lead to innovation for the India Inc.

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10.	Schedule 1 – Part III Schedule IX	Clause 15(2)	DTC provides that in case of a non – resident, the rate for income tax on royalty/FTS should be 20%	1. In case the foreign company does not have a PE in India the rate of tax in the case of Royalty and FTS subject to tax on gross basis should be reduced to 10%. Alternatively: Grandfathering provisions should be introduced i.e. The income arising from the existing contracts should continue to be taxed at the current rate. In the past also at the time of such change in basis of taxation, exceptions were carved for the existing contracts. 2. In case the foreign company has a PE in India to which the income is attributable to, the assessee should have the option to pay tax @20% on gross basis or @30% (plus BPT) on net basis.	**Rate of 20% on gross basis** The tax rate of 20% on a gross basis presumes profit margin of 400% on cost. This is an unreasonable assumption. In oil and gas sector, it is a normal practice that as per the terms of contract (especially with foreign companies), the Indian tax withholding cost is borne by the oil and gas company. Such a higher tax withholding rate will increase the Indian company's cost.

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			Schedule 9, Rule 2 of DTC provides to include any amount accrued or received as reimbursement of any expenditure.	3. The amounts paid towards reimbursement of expenses should be included in the Income from Special Source only if the amount of such reimbursements is more than 10% of the income (i.e. interest, royalties, fees for technical services etc.)	**Inclusion of reimbursement of expenses in taxable income** The Ninth Schedule provides that the amounts received towards reimbursement of expenses shall be treated as "special source income". It may be noted that such reimbursements do not have any income element and hence need to be excluded from income which is subjected to tax on gross basis. Such a provision will result in practical difficulties since the entities which make payment on behalf of associated enterprise / group companies and receive reimbursement subsequently, the reimbursement received shall be regarded as taxable income and payment made by the former entity will not be allowable as deduction.
			Schedule 9, Rule 4 of DTC presumes the amount of income from special sources being computed after giving effect to every loss, allowance or deduction. Clause 62 of DTC restricts set off of Special Source losses against gains from ordinary sources.	4. Rule 4 of Schedule 9 giving presumption for deduction for all allowable expenses should be deleted 5. The assessee should be allowed other losses to be adjusted against income from Special Sources	**Unintended results for the expatriate employees with short stay** In terms of the provisions of the Article dealing with dependent personal services[1] of the tax treaties, one of the conditions to be satisfied by the non-resident employees is that the salaries are not borne by the PE of the non-resident employer in India. If deduction for expenses is presumed to have been granted in terms of Rule 4 of the Ninth Schedule, the benefit of the tax treaty would be denied to the non-resident employees

[1] Article 15 of the tax treaties

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					for the short stay in India. There is no justification for not allowing such set off. Under the current law[2] such a set off is allowed and only the net income is subjected to gross basis of tax.
11.	Chapter IX Charge of branch profits tax	Clause 111 Tax on branch profits	DTC levies an additional Branch Profit Tax @ of 15% on every foreign company on profits directly or indirectly attributable to the permanent establishment or immovable property	To avoid complexities around interpretation and applicability of a new levy in terms of BPT, it is recommended that levy of BPT be deleted and the revenue impact be taken into account by way of calibration of tax rates. If at all BPT is to be introduced, then it is recommended that- • BPT to be levied only when there is a remittance of branch profits to the head office. • Branch profits not to include income other than income of branches from ordinary sources.	Under the current law the foreign companies are subject to tax at a higher rate as compared to the Indian companies. The effective tax rate for the foreign and the Indian companies is comparable once the DDT payable by the Indian companies is considered. The DTC reduces the basic tax rate applicable to the foreign companies but proposes to levy BPT, may be with the objective of maintaining comparable effective tax rate after considering the DDT payable by the Indian companies. This new levy however results in several complications. Accordingly, instead of levying BPT, the basic tax rate applicable to the foreign companies may be increased. The definition of 'permanent establishment' could be subject matter of interpretation and this will result in substantial uncertainty as regards the base for levy of BPT. The language of the relevant provisions gives an impression that BPT is not 'income tax' and this could create some difficulties for the foreign companies in claiming credit for BPT in their home countries.

[2] Section 115A(1)(b) is applicable to the extent "royalties" / "FTS" are included in the taxable income

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				• BPT to be levied only on profits that are earned after DTC comes into force. • To define BPT as an 'Income Tax' so that the Foreign Companies are not denied credit in their home country. • The tax base for levy of BPT should be Total Income and the word 'indirectly' being used should be deleted. The Art. 7 of most DTAAs do not have the rule of 'force of attraction' for determining business profits. • BPT shall not be levied if the non – resident is not liable to corporate tax. • It should be clarified in what context the domestic law would override the tax treaties for levy of BPT.	It has been provided that the provisions of the DTC as regards levy of BPT would override the tax treaty provisions. However, it is not clear how the provisions of the treaty would be overridden and this results in some confusion. The BPT should be levied only on profits earned after 1 April 2012, as profits earned prior to 1 April 2012 would be subjected to a higher corporate tax rate of 40% currently applicable to foreign companies.
12	Chapter III-	Clause 32(2)	Clause 32(2) seeks to provide the	The word "natural gas" should	The Fourteenth Schedule takes the meaning of 'mineral oil'

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.	Computation of Total Income Part D – Income from Business	read with the Fourteenth Schedule	taxability of certain specified businesses on presumptive income basis as per the fourteenth schedule. This, inter alia, includes persons engaged in providing services or facilities or supplying plant and machinery on hire, in connection with the prospecting for, or extraction or production of, mineral oil or natural gas. The income from such business shall be computed at 14% deemed profit rate.	be added in column (3) which defines the amount of income. The words "fourteen per cent" occurring against items # 5 and 6 in column (3) of the Table in Rule 1 of the Fourteenth Schedule to the Code may be replaced by the words "ten per cent".	as per the definition given in the Eleventh Schedule. It appears to be a typographical error of missing the word "natural gas" in column 3(Amount of income) , when it is already included in column 2 (Nature of business). Thus, it should be corrected so as to bring in line and harmonious reading of column(2) and (3). As per the existing provisions, 10% of gross received is considered as taxable income of the non-resident engaged in business of providing services or facilities in connection with the prospecting for, or extraction or production of, mineral oils. Similar rate should be retained in the DTC.
13	Chapter III- Computation of Total Income Part II.C – Income from Business	Clause 33(2) (xii)/(xiii) and Clause 314(215)	Any benefit by way of remission or cessation of any trading or statutory liability or any loss or expenditure and the amount of reduction, remission or cessation of any liability by way of loan, deposit, advance, or credit, is liable for inclusion in the gross earnings dealt with by the Code. The meaning of the term 'remission or cessation of any liability' is defined in an inclusive manner in Section 314(215) of the DTC is as follows: (a) unilateral act by way of writing off liability by the taxpayer or by creating	The second(b) part of the definition of 'remission or cessation of any liability' should be deleted or suitably amended to provide that outstanding liability would not become income in the cases where suit is pending or the debtor is acknowledging its debt	The second part of the definition contained in clause (b) above would mean that an unpaid creditor outstanding for more than five years from the end of the year of last transaction is taxed in the hands of the taxpayer (debtor) as income on deemed basis. A creditor's account may remain un-responded or outstanding for reasons such as dispute between the parties or due to proceedings pending before the court of law. In such cases, the liability would not have been discharged due to pending litigation or decree of the court. The Direct Taxes Code (DTC) does not provide for recognizing such genuine contingencies and hence merits reconsideration.

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			a reserve; and (b) if no transaction was made with the creditor for a period of five years from the end of the financial year in which the last transaction took place.		
14	Chapter 2 Basis of charge & Chapter V Computation of Book Profit	Clause 2 read with Schedule 1 & Clause 104 read with schedule 2	The tax rates provided under the DTC for a company are: Domestic company's tax rate : 30% Minimum Alternate Tax : 20%	The corporate rate should be revised and bring down to 25% and MAT rate should brought down to 50% of Corporate tax rate (i.e 12.5%)	Considering the insertion of various other stringent, deterrent provisions introduced to ensure discipline in bringing income to tax and minimizing the cases of tax evasion, the corporate tax burden on the tax payer should be reduced. The proposed increase in MAT rate detracts from the original objective of the insertion of the levy, which was to provide for a 'minimum' alternate tax where the income computed under the Act is not taxable. With the proposed increase, the levy seems to move away from a minimum alternate and towards a proximate alternate. Therefore, MAT rate should be modified.
15.	Chapter III- Computation of Total Income Part II.C – Income from Business	Clause 35 Operating Expenditure	Clause 35 (2) of DTC inter alia allows deduction of the following expenditures for the purpose of computing business profits. • Land revenue, local rates or municipal taxes in respect of premises occupied and used by the taxpayer, **if the amount is actually paid** • Contribution by employer to an	These expenses need to be allowed on accrual basis without waiting for the final payment of amount. A suitable amendment in this regard may be incorporated in Clause 35.	These expenses are deductible only if actually paid. In the mercantile system of accounting expenses are booked on incurrence or due basis, the actual payment may be made later. Certain expenses like Leave encashment, gratuity etc are accounted based on actuarial valuation as per accounting standards prescribed by Institute of Chartered accountants of India. Thus, an amendment in this regard is required in Clause 35.

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			approved fund, **to the extent the amount is actually paid** • Tax (not being a tax under this Code), duty, cess, royalty or fee, by whatever name called, under any law for the time being in force, **if the amount Is actually paid;** • Bonus or commission to employees for services rendered **if the amount is actually paid;** • Encashment of leave to the credit of employees, to **the** extent the **amount is actually paid;** • Gratuity to employees on their retirement or on termination of their employment, to **the** extent **the amount** Is **actually paid;**		

III. Tax Holiday

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1	--	--	The DTC seeks to discontinue profit-based incentives and instead replace these with expenditure / investment linked incentives.	The DTC to provide for profit linked incentives to the high risk and capital intensive business.	• Tax holidays and similar incentives have proved to be extremely useful policy tools of governments especially in developing countries to attract investment into high risk and capital intensive business. Most competing Asian countries have wide range of profit based incentives prevalent, which facilitate investment in those countries and specifically boost their global competitiveness. Abolition of profit linked incentives would significantly hamper investments in the Indian E&P sector. • Profit Based Tax incentives are of permanent nature whereas Investment based Tax Holiday provides benefits of temporary nature. Therefore, profit linked tax incentives must be retained. • This will go against the Sovereign promise made under the NELP / CBM Policy under which the blocks are awarded by the Government till date.
2.	Eleventh Schedule	--	Investment-linked tax incentive has been extended to the business of prospecting for or extraction or production of mineral oil or natural gas. • Refining of mineral oil or natural gas has not been extended any Investment-linked tax incentive.	Investment-linked tax incentive should also be extended to 'refining of mineral oil and natural gas. Thus, the definition of 'business of mineral oil or natural gas should be amended to include the business of refining of mineral oil or natural gas.	Refining of mineral oil should be treated at par with production of mineral oil

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3.	Chapter XX – Miscellaneous	Clause 318(2)(s)	The deduction under section 80-IB(9) of the repealed Act shall continue to be allowed under this Code if the undertaking is engaged in: • Commercial production of mineral oil in any block licensed under a single contract before the commencement of this Code; • Refining of mineral oil and begins such refining on or after 1st October 1998, but not later than 31st March 2012 • Commercial production of natural gas in block licensed under NELP-VIII or CBM-IV and begins commercial production on or after 1st April 2009	• It should be clarified that the deduction under section 80-IB(9) of the repealed Act shall continue to be allowed so long as block has been licensed before April 1, 2012 (even if the commercial production commences at any subsequent date). • It should be clarified that the following are also eligible for grandfathering: o Production of natural gas in blocks other than blocks licensed under NELP-VIII or CBM-IV o Refining of natural gas	• There is a possible interpretation that the blocks in which the commercial production has not commenced before April 1, 2012, will not be eligible for grandfathering, even if they are licensed before that date. In case the grandfathering rule is not extended to the blocks awarded under various rounds of NELP and CBM till date wherein the commercial production has not commenced until 31st March 2012, it will go against the Sovereign promise made under NELP and CBM. The profit based tax holiday may be withdrawn from the blocks licensed after 31 March 2012. • Since mineral oil and natural gas are separately defined in the DTC, extending the benefit of grandfathering provisions to only to refining of mineral oil, may disentitle the same benefit to refining of natural gas.

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4.	Chapter XX- Miscellaneous	Clause 318(2)(s) read with Thirteen Schedule	Eleventh Schedule allows 100% deduction of capital expenditure incurred by the assessee. Clause 318(2)(s)(i) provides that the amount profit eligible for profit-based deduction during grandfathering period shall be computed in accordance with the provisions of DTC (other than provisions in clauses (d) and (f) of Eleventh schedule relating to capital expenditure) Clause 318(2)(s)(iii) provides that the capital expenditure excluded in Clause 318(2)(s)(i) shall not be allowed as deduction in computing gross total income.	• The taxpayer should be given an option whether or not to reduce the capital expenditure for the purpose of computing profits eligible for profit-based deduction during grandfathering period.	• During the grandfathering period, the benefit of tax loss arising on account of capital expenditure (i.e. in case amount of capital expenditure is more than the profit before reducing such capital expenditure) will not be available. Such loss otherwise would have been available to be carried forward and set off in subsequent years.

IV. Indirect Transfer

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
1.	Chapter II Basis of Charge	Clause 5(6) Income Deemed to accrue or arise	Clause 5(6) of DTC provides that Transfer of any share or interest in a foreign company, outside India is deemed to accrue or arise in India.	•Since the GAAR provisions encompasses even indirect transfer of capital assets outside India, specific provisions to tax the indirect transfer should be excluded from the DTC. •If the provisions are to be introduced, exemption should be provided for: –Transactions involving less than 50% of shares or interest of the foreign company ; or –Transactions done on a stock exchange outside India –when the transaction outside India is for reorganisation of the group structure •Parameters of FMV should be replaced with book value as per the latest audited accounts. The proposed provision	Profits arising from indirect transfer of assets in India, by virtue of transfer of shares or interest of a foreign company are proposed to be taxed in India unless the asset test (50% in India) is satisfied. The proposed provisions could trigger Indian tax liability in certain situations even if a small fraction of shares of a foreign company is transferred outside India. Similarly, transactions executed on stock exchange outside India are also likely to have Indian tax implications. There are no methods prescribed for determining the Fair Market Value (FMV) of the assets in and outside India. It is contemplated that the FMV of such assets may be calculated on every single day of the year. This may not be possible to implement. The proposed provisions could trigger tax liability in India even in case of internal reorganization of the structure of the foreign group. Since such reorganization does not result in any income from a third party, such restructuring should not trigger any taxable event.

				contemplates calculation of FMV on every single day of preceding 12 months, which is practically not possible to implement. •For the purpose of applying 50% parameter : - the value of "all assets directly or indirectly owned by the company" should be considered - the time of transfer (and not any time in the preceding 12 months period) should be the time of testing - the method of determining fair market value should be prescribed, keeping in mind that the comparison would be between assets across jurisdictions. .	

V. International Taxation

Sl. No.	Chapter of DTC	Clause DTC	Provisions of DTC	Changes Suggested	Brief reasons for the suggested change
1	Chapter XIX Interpretations and Constructions	Clause 314 (183) (a) (x) / (xi) and Clause 314 (183) (b) Permanent Establishment means	The definition of Permanent Establishment inter alia includes (i) a building site or construction, installation or assembly project or supervisory activities in connection therewith; (ii) furnishing of services, including consultancy services, by the assessee through employees or other personnel engaged by him for such purpose; and It also deemed to include : (*iii*) a substantial equipment in India which is being used by, for or under any contract with the assessee	Sub clauses (x) and (xi) may be redrafted to provide a duration test of say 180 days in financial year for the purpose of constitution of PE. The criterion of 'Substantial equipment in India' to constitute PE is not in line with criteria mentioned in tax treaties and should be deleted from the definition of PE.	The definition of Construction PE and Service PE under the Code is much wider than that contained in the Treaties that India has entered into with other countries wherein duration test has been prescribed. It would be unfair to deem a PE if the non-resident has building site, construction/installation/assembly project or supervisory activities or furnishes services, even for one day. The term "substantial" lends subjectivity to the definition of PE and thus, could result in unnecessary dispute with the tax authorities.
2	Chapter XVII General	Clause 291(5)	A person shall not be entitled to claim relief under the provisions of the tax treaty unless a certificate of his being a resident in the other country or specified territory is obtained by him from the tax authority of that country or specified territory, in such form as may be prescribed.	The provision may be modified to provide that a certificate in a form it is issued in that country or specified territory will be acceptable for entitling a person to claim the benefit under the provisions of the tax treaty.	Clause 291(5) would necessitate that TRCs in the form prescribed by Indian Income Tax authorities be provided by non-residents. This could come in conflict with the form in which TRC is issued by tax authorities of some countries like USA and, hence, cause difficulty in claiming DTAA benefit.
3	Chapter III-Computation of Total Income	Clause 58(2)(u) Controlled Foreign	The total income of a resident shall include income attributable to a CFC computed in the manner prescribed. A CFC has been defined with respect to the Jurisdiction it	• The likelihood of an Indian resident being burdened with wealth-tax on assets of the CFC, when the CFC itself, being a foreign	

Sl. No.	Chapter of DTC	Clause DTC	Provisions of DTC	Changes Suggested	Brief reasons for the suggested change
	Part E – Income from Residuary Sources Read with Schedule Twentieth	Company	resides in, the control by persons in India, the trade or business sit Is engaged in and the threshold of its specified income determined.	company **is** not liable to wealth-tax, causes an anomaly and needs to be dealt with. Accordingly such assets need to be excluded from the purview of wealth tax. • The impact of CFC should be restricted to foreign companies in which an Indian company is having control and not to subsidiaries of the said foreign company. • The definition of trade or business which discounts certain activities as not being reflective of active trade or business if more than 50% income arises therefrom should be amended to exclude streams like income from house property, sale or licensing of intangible rights, royalty, supply of goods and services to controlled persons and associated enterprises. • Tax credit mechanism has to be strengthened before the CFC regulations are introduced, else the assessee could suffer a severe cash flow, paying tax in both countries and unable to get a credit for tax payments made	These income streams can be indicative of genuine activity and substance in a foreign location.

Sl. No.	Chapter of DTC	Clause DTC	Provisions of DTC	Changes Suggested	Brief reasons for the suggested change
				overseas.	
4	Chapter XVII General	Clause 291(9)	Clause 291(8) provides that the provisions of Direct tax code or Treaty whichever is more beneficial to the assessee shall apply. However Clause 291(9) provides that the provisions of the DTC relating to GAAR, Levy of BPT or CFC shall apply to the assessee whether or not such provisions are beneficial to him.	• The treaty override provisions should be implemented only after the necessary safeguards in respect of GAAR and CFC are put in place else the assessee could be put to undue hardship and uncertainty resulting creating shackles to business. • The treaty override in case of GAAR and CFC rules application should be discretionary and not mandatory and be subject to more than one level of approval to ensure that genuine cases get a review at a second level. • A threshold should be prescribed for application of the provision of clause 291(9) so as that only cases where significant amounts or matters are involved are subjected to such provisions.	Since the provisions related to GAAR and CFC require some modification, it needs to be ensured that the treaty override provisions do not cause undue hardship on the taxpayers.

VI. General Anti Avoidance Rule

Sl. No.	Chapter of DTC	Clause DTC	Provisions of DTC	Changes Suggested	Brief reasons for the suggested change
1	Chapter XI Special provisions relating to avoidance of tax	Clause 123 General anti – avoidance rule	Arrangement entered into by a person declared as impermissible avoidance arrangement	• Instead of CBDT guidelines, let specific safeguards be incorporated in the statute itself. • There should be detailed guidelines covering specific instances/situations which indicates positive/negative list of transactions and their treatment. • The guidelines should consider the following : – GAAR is not a revenue raising mechanism; – GAAR is intended to only prevent abusive tax avoidance and should not interfere with legitimate and commercial transactions. • To provide for a specific savings Clause whereby GAAR provisions should not be made applicable to transactions / arrangements entered into prior to its introduction in the statute. • All the conditions for invoking GAAR should be applied cumulatively and not only one for applying classifying the arrangement as "impermissible	GAAR provisions are subjective in nature and give wide power to the tax authorities. Fear of arbitrary application of the provisions.

Sl. No.	Chapter of DTC	Clause DTC	Provisions of DTC	Changes Suggested	Brief reasons for the suggested change
				avoidance arrangement" • The concept of advance ruling mechanism should be introduced with regard to GAAR in order to provide certainty on tax treatment. **The Authority should be constituted on the lines of the AAR and have a person of the Industry as one of its members. In addition to the taxpayer, the Commissioner of I.T. would also have to approach the Authority if he wants to invoke GAAR in any case.** • Threshold limit for invoking GAAR should be reasonable. • GAAR should be applied with respect to arrangement where **'sole'** purpose of a step or part of the arrangement is to obtain tax benefit. • The power given to the Commissioner is extremely wide and virtually enables him to rewrite the transaction. • The orders of the Authority on GAAR should be appealable. • The time limit for invoking GAAR provisions should be prescribed. A time limit not exceeding two years post transaction should be	

Sl. No.	Chapter of DTC	Clause DTC	Provisions of DTC	Changes Suggested	Brief reasons for the suggested change
				prescribed within which GAAR provisions can be invoked by the tax authorities. • GAAR orders/findings should not be revisited every year if the facts surrounding the arrangement have remained unchanged. • For invoking GAAR, onus should be on the tax authorities to provide reasons to the tax payer as to why his case is covered by GAAR. • GAAR provisions should not apply in cases where a transaction/arrangement has been approved by a forum such as High Court, Supreme Court. • The terms 'tax indifferent party' and 'connected person' needs to be defined.	

VII. Income from House Property

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
1.	Chapter III Computation of total income II.B.— Income from house property	Clause 24	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.	Clause 24(2) may be modified so as to provide that the income from house property shall not include any income from a house or other accommodation allotted to an employee or other person engaged by the assessee.	Under the Act, if letting out of house property was incidental to the business of the assessee, such as letting out staff quarters to employees, the income from the same is computed as business income. Companies allotting accommodation to their employees have been offering the receipts by way of rent recovery as business receipts and claiming expenditure on repairs etc. of the allotted accommodation as business expenditure. As per Clause 25 of the Code, the receipts of rent recovery would need to be taxed as income from house property and fixed deduction of 20% of the rent recovery would only be admissible as deduction towards repairs while computing the income from house property. Since allotment of accommodation to employees is not on account of employer's desire to earn rental income but to facilitate the employer's business, more so in the E&P industry, the earning of rent and incurrence of expenditure on

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
					maintenance, etc. of such accommodation is incidental to the employer's business. As such, it would be appropriate not to consider the same as income from house property but as income from business.

VIII. Individual Taxation

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
1.	-------	--------	…………..	It is suggested that provisions similar to section 10(10CC) and 40(a)(v) of the Act may be incorporated at suitable places in the Code to cover all kinds of employment income.	Under the Act, an employer can agree to pay the tax on non-monetary perquisites provided to employees. If the employer does so, the amount of tax so borne by the employer is not deductible in computing employer's income as per section 40(a)(v) of the Act and the employee is not liable to pay tax on the benefit resulting to him due to the employer having paid such tax as per section 10(10CC) of the Act. The Code, however, does not contain any corresponding provisions. This would create difficulty for those employers who need to bear the tax on their employees' incomes to attract & retain talent or to honour commitments made in the past.
2	Chapter III-Computation of Total Income Part II.C – Income from Business	Clause 35(4)(g)	Clause 35(4)(g) of DTC inter alia disallows the deduction of any amount of contribution by an employer during the financial year to an approved superannuation fund on account of an employee to the extent it exceeds one lakh rupees; As per Clause 23(e) the employer's contribution to approved superannuation fund is not taxable in the hands of the employee.	The limit of one Rs lakh should be deleted and the deduction should be allowed for any amount of contribution by an employer during the financial year to an approved superannuation fund.	Under the Act, the full amount of an employer's contribution to an approved superannuation fund is deductible in the employer's hands. However, if such contribution exceeds Rupees One Lakh in respect of an employee, the excess is taxable in the employee's hands as a perquisite u/s. 17 of the Act. There appears to be no rationale for prescribing the said limit of Rupee One Lakh particularly when approved superannuation funds are duly regulated.

IX. Others

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
1.	-------	--------	The DTC does not have a provision like existing law to provide that the person entering into agreement with Government of India for exploration and production of mineral oils would be assessed in their individual capacity rather than as Association of Person or Body of Individuals.	Similar notification needs to be issued under DTC to maintain status quo of existing unincorporated Joint Ventures and also for future unincorporated Joint Ventures.	Business of prospecting, extraction and production of mineral oil and natural gas is highly capital intensive and risk prone with long gestation period. Worldwide, parties come together by forming unincorporated joint ventures for undertaking these activities and share costs and risks. Under the DTC, ppartners of a single PSC can be treated as Association of Persons (AOP). Thus, foreign companies engaged in joint exploration activities are exposed to the risk of constituting an AOP in India. The constitution of an AOP in India would in turn result in risks relating to availability of credit of the taxes paid in India to the foreign company in its country of residence. The consortium with different partners or same partners with different stakes shall be considered as separate AOP. The losses shall be ring fenced at the AOP level. This may lead to a situation for a JV partner, that despite loss occurring from one PSC, tax is to be paid in case there is a profit in another PSC of which that

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
					company is also a member of the consortium since inter se set off of losses would not be possible. Further no power has been conferred to the central Government in the DTC to notify any exemption for the tax rate or modification of the status of assessee as contained under the existing provisions
2.	Chapter XX-Miscellaneou s	318 – Repeals and Savings	Repeal and Savings- Losses	This clause should be suitably amended to provide that accumulated losses available as on the day preceding the date on which the DTC comes into force will be available for carry forward and set-off in a manner similar to losses incurred after the DTC comes into effect.	The Repeal and Savings Clause does not contain any provisions specifically dealing with carry forward of losses incurred under the IT Act, after the DTC is enacted. The absence of detailed savings clause in this regard will result in significant uncertainty to taxpayers and could lead to protracted litigation.
3.	Chapter XX-Miscellaneou s	318 – Repeals and Savings	Repeal and Savings - MAT credits	The Repeal and Savings clause should be suitably amended to provide for utilisation of MAT credits against tax liabilities under the DTC.	The Repeal and Savings Clause does not contain any provisions specifically dealing with carry forward of and utilisation of Minimum Alternative Tax credits under the DTC. The absence of such a specific rule

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
					could result in the MAT credits paid under the IT Act being lost. This will cause undue hardship to taxpayers.
4.	Chapter XX-Miscellaneous	318 – Repeals and Savings	Repeal and Savings- Unamortized expenses	Under the existing IT Act there are certain provisions under the head 'profits and gains from business and profession' which deal with amortisation of expenditure over a period of time. • Amortisation of expenditure on obtaining license to operate telecommunication services – amortised over the tenure of license (Section 35ABB) • Amortisation of Preliminary expenses – amortised in five years (Section 35D of the IT Act) • Amortisation of expenditure under amalgamation or demerger – amortised in five years (Section 35DD) • Amortisation of expenditure incurred under Voluntary Retirement Scheme - amortized in four years (Section 35DDA) • Deduction for expenditure on prospecting, etc, for certain minerals – amortised in ten years (Section 35E) • Amortisation of capital expenditure for the purpose of family planning – amortised in five years (Section 36(ix)) • Amortisation of expenses referred to in section 42 read with the provisions of DTC It is recommended that specific provisions dealing with the allowability of unamortised amount of such	• The DTC seeks to do away with the amortisation of certain expenditure and seeks to provide depreciation allowance on the expenditure by treating them intangible assets or deferred revenue expenditure The DTC should take care that the unamortized value of such expenditure under the current law should be available to the assessees for depreciation purposes under DTC regime. The Repeal and Savings Clause does not contain any provisions specifically dealing with the opening WDV as per the IT Act for the block of the assets, after the DTC is enacted. The absence of detailed savings clause in this regard will result in significant uncertainty to taxpayers and could lead to protracted litigation.

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
				expenditure under the current law as on date when DTC will come into force should be inserted under the DTC.	
5.	Chapter IX- Charge on branch profit tax and Chapter V- Computation of book profit	Clause 104 and Clause 111	Clause 104 (1) provides that where the 'normal income-tax' payable is less than tax on book profit, the book profit shall be deemed to the total income of the company and it shall be liable to income tax on such total income. Clause 104(6) defines 'normal income-tax' to mean the income-tax payable by a company on its total income in accordance with the provisions (other than provisions of this Chapter). Sub clause 263 of Clause 314 defines total income means computed under clause 63. Clause 63 provides that total income shall be aggregated of ordinary source income (as reduced by deduction under sub-chapter IV) and special source income. Clause 111 provides that every foreign company shall, in addition to income-tax payable, be liable to BPT in respect of branch profit.	It should be clarified that normal income tax payable includes BPT as well.	The MAT is payable in case the normal income-tax payable is less than tax on book profit. In case the BPT is not included in the definition of normal income-tax, then the foreign companies will be liable to pay higher of tax on book profit or tax on total income (other than branch profit) and in addition, there will be additional liability of BPT. Accordingly, the effective MAT rate for foreign companies comes out to be 32% which is too high by any stretch of imagination. Separately, BPT so paid may not be treated at par with MAT liability and thus, will not be available for credit in subsequent years. Thus, the BPT paid by foreign companies will be dead loss even if it is incurring losses as per the provisions of DTC.

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
6.	Chapter XII – Tax administration and Procedure, Part B – Assessment Procedure	Clause 159 Reopening of Assessment	(3) The tax bases chargeable to tax shall be deemed to have escaped assessment in the following cases, namely:— (c) where an assessment has been made under clause 155 or clause 156, but— v. the computation or assessment has not been made in accordance with any order, direction, instruction or circular issued by the Board vi the computation or assessment has not been made by the Assessing Officer in accordance with any order, direction, instruction or circular issued before making of the assessment, by an authority to whom the Assessing Officer is subordinate	• As per DTC 2009, a provision was introduced to the effect that reasons for reopening should be provided with the reopening notice, but the same was not placed in the DTC 2010 bill. This provision should be included for more transparency. • Deeming fiction has been extended to even include the order, direction, instruction or circular issued by a superior authority as a basis of reopening. Such provision delegates an arbitrary and uncontrolled power to the AO wherein even on the basis of any internal circular or memorandum, the AO would reopen the assessment. Accordingly, an assessment can be reopened arbitrarily by the AO. This should be done away with. • It is a settled legal principle that while finalizing an assessment, the AO acts as a quasi judicial authority and therefore should not be guided by the superior authorities and such a provision should be done away with. More so if the instruction is contrary to the law laid down by the High Court/ jurisdictional Tribunal. • A safeguard should be introduced to restrict the power of reopening only on the issues which are not subject matter of appeal for the concerned	• Even though it is provided that the AO shall record reasons in writing, whether or not an assessee will be able to file objections to reopen and seek their specific disposal by the AO, as has been settled legal position, is still an issue. • Deeming fiction has been extended to even include the order, direction, instruction or circular issued by a superior authority as a basis for reopening. Such provisions delegate an arbitrary and uncontrolled power to the AO wherein even on the basis of any internal circular or memorandum, the AO would reopen the assessment. • As per second proviso of clause 147 of the Act, the reopening for an assessment year in relation to which an appeal has been filed, can be made for issues other than those which are taken in appeal

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
				assessment year. • The policy of law is that there must be a point of finality in all legal proceedings and those issues should not be reactivated beyond a particular stage. The unrestricted overriding powers given to tax authorities may cause concern and uncertainty to assessee and therefore original corresponding provisions of the act should be retained which have been tested in various courts of law. • In respect of the assessments completed under the Income Tax Act, the provisions relating to erstwhile Act would continue to apply. The provisons of DTC relating to reopening of assessments should be made applicable only in respect of assessment orders passed after April 1, 2012. • There should be a provision similar to the first provision of clause 147 wherein the power of AO was limited if the reopening is done beyond four years period which must be incorporated to promote greater transparency in the system.	
7.	Chapter XII – Tax administratio n and Procedure, Part D –	Clause 191 Revision of orders prejudicial to the interest of	(*8*) Without prejudice to the generality of the foregoing provisions, an order passed by an income-tax authority shall be deemed to be erroneous in so far as it is prejudicial to the	• Deeming fiction has given the arbitrary powers to CIT which should be done away with • Provision construing not following the jurisdictional High Court order if an SLP has been granted is unjust for the reason that it would	• Deeming fiction has been extended to even include the order, direction, instruction issued by Board. Further, in the cases where order has not been passed in accordance with the order of higher appellate authorities

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
	Appeals and Revision	the revenue	interests of the revenue, if— (*c*) the order has not been made in accordance with any order, direction or instruction issued by the Board under clause 129; (*d*) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by— (*i*) the Appellate 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 Wealth-tax Act, 1957. as stood before the commencement of this Code; or (*ii*) a court under any other law; or (*e*) the order has been made following the order of a jurisdictional High Court but a special leave petition has been granted by the Supreme Court against the said decision of the High Court subsequent to the passing of the order.	amount to the contempt of court. Such a provision is arbitrary in nature and should be done away with.	even in the case of other assessees, the CIT can pass the revision order.
8.	Chapter XII – Tax administration and Procedure, Part D – Appeals and Revision	Clause 181 Power of Commissioner (Appeals)	Clause 181*(2)* The Commissioner (Appeals) may consider and decide any matter which was not considered by the Assessing Officer	•Such an arbitrary power may lead to misuse of the power by CIT(A) and therefore proper safeguard should be provided in the Code	•The power of CIT(A) has been widened to even include the matters which are not part of the assessment order, such an arbitrary power is against the scope of traditional appellate jurisdiction

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
9.	Chapter XII – Tax administration and Procedure, Part D – Appeals and Revision	Clause 186 Constitution of benches and procedure of appellate tribunal	Sec 186*(5)*The President shall, on a reference received from the Board for the disposal of any particular case, constitute a Special Bench consisting of five members or more, two of whom shall necessarily be judicial members and two accountant members	• Provisions of constituting special bench should remain as it is for the reason that such an unreasonable power to one of the litigant is unjustified and uncalled for. •	• By way of this provision, arbitrary power has been given to CBDT which is one of the party in litigation in the form of the revenue. •
10.	Chapter XIV Penalties	Clause 230 Penalty for under reporting of tax bases	Clause 230. (*1*) A person shall be liable to a penalty if he has under reported the tax bases for any financial year. Further sub clause (3) of the above Clause talks about cases where a person shall be considered to have under reported the tax bases where: (*a*) the tax bases assessed or reassessed, for the first time, is greater than the maximum amount not chargeable to tax, if any, where no return of tax bases has been filed; (*b*) the tax bases assessed is greater than the tax bases disclosed in the return of tax bases; or (*c*) the tax bases reassessed is greater than the tax bases assessed immediately before the re-assessment.	The language as proposed in DTC 2009 can be retained so that penalty should be initiated when it is *willful* •	• Pursuant to the Judgment of the Supreme Court in *CIT, Ahemadabad* vs *Reliance Petroproducts, Pvt ltd.* 2010-TIOL-21-SC-IT, wherein it was held, "Mere disallowance of the claim made in the return of income cannot be the basis for levy of penalty under the ITL...Furnishing inaccurate particulars can be alleged only if there is a deliberate act or omission on the part of a taxpayer.", After four decades of litigation on this issue, finally the law has got settled. • The proposed clause does not talk about deliberate act or omission. Since one of the reasons for proposing DTC is that it should minimize litigation, if the proposed clause is left in its proposed form, it may result in similar litigation what we have experienced in the context of IT Act, 1961.

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
	---	----	Power of CIT to reduce or waive penalty or to grant immunity from penalty	The DTC does not contain any provision empowering CIT to reduce or waive penalty or to grant immunity from penalty. A provision similar to Section 273AA of Income Tax Act should be introduced.	• CIT's power to reduce or waive penalty or to grant immunity from penalty has been taken away in the DTC 2010. • Such an abridgement of power may not be in sync with the stated objectives of introducing DTC by making it simpler and tax payer friendly and to reduce litigation. • In suitable cases, enabling provisions should be provided for CIT to reduce, waive or to grant immunity to an assessee who is willing to come clean and cooperate with the department. In absence of such provisions, litigations are bound to be higher.
11.	---	---	Power of CIT to grant immunity from prosecution	The DTC does not contain any provision empowering CIT to grant immunity from prosecution A provision similar to Section 278AB of Income Tax Act should be introduced.	• CIT's power to grant immunity from prosecution has been taken away in the DTC 2010. • For reasons stated above, litigation is bound to increase. • In cases, where prosecution has been initiated but the assessee has been given relief by an appellate authority, or some other judicial forum has laid down a law which makes prosecution as unsustainable, power should be given to CIT wherein they can withdraw the

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
					cases of prosecution already initiated in deserving cases.
12.	Chapter XII – Tax administration and Procedure, Part D – Appeals and Revision	Clause 179 and 183	Power of CIT(A) and ITAT to condone delay in filing appeal	• Such restriction should be removed and the present position should be restored.	• In DTC, the power of CIT(A) and ITAT to condone the delay in filing the appeal is restricted to one year which is unreasonable and harsh on an assessee who has not been able to file appeal in that period due to some genuine reasons
13	Chapter XVI Definitions	314(220)	"royalty" means (a) ……….. (b) ……….. (e) the use or right to use of any industrial, commercial or scientific equipment including ship or aircraft but excluding the amount, referred to in item numbers 17 and 18 of Table in the Fourteenth Schedule, which is subjected to tax in accordance with the provision of that schedule;	• Provision exclude item numbers 17 and 18 of Table in the Fourteenth Schedule but Fourteenth Schedule does not contain item 17 and 18. Item number 5, 6 should be substituted with 17, 18.	Item 5 and 6 of schedule fourteen deals with presumptive taxation regime in case of non residents providing services or facilities or supplying plant and machinery in connection with the prospecting for, or extraction or production of mineral oil. Definition of Royalty in the existing law also excludes such amount. Thus suitable changes should be made. •
14	Chapter – XVI	Clause 314(68)	Date of setting up of a business" means - (a) in the case of business of manufacturing, production or processing of goods, the date on which the manufacture, production or processing of the goods begins after	It should be clarified that business of upstream companies can be said to be set up, once the exploration activity is commenced. Separately, the upstream oil and gas business may be elaborated to include carrying out exploration activities (including carrying search and surveys), development	In case of E & P business, there is no surety as to definite revenue stream which is not the case with other business activities. Exploration activities with inherent risk involvement followed by uncertainty as to whether it will result in production of mineral oil should be

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
			successful trial run of the plant; or (b) in any other case, the date on which it is ready to commence its commercial operations;	and production activities since these are nothing but various stages of upstream business model. Alternatively, exploration activities may be deemed to be commenced from the date of grant of exploration license so that the deduction for available from that date.	construed as setting up of business.
15	…..	…….	………	**Underlying tax credit** The provisions for claiming credit for tax on income paid by a foreign subsidiary should be introduced. Alternatively, underlying tax credit should at least be allowed in cases where income of a foreign subsidiary is subjected to tax in India by applying the CFC Rules. The proportion of underlying tax for which credit should be allowed can be the same as the proportion of profits earned by the foreign subsidiary which are taxed in Indian under the CFC Rules. Suitable provisions may, therefore, be inserted in the Code at appropriate place(s).	Both under the Act and the Code, there is no provision for claiming credit for tax on income paid by a foreign subsidiary (typically referred to as underlying tax credit). The non-allowance of underlying tax credit creates a discriminatory tax environment in favour of a foreign branch model for investing overseas as against a foreign subsidiary company model. This is for the reason that, while profits earned by a foreign branch or a 100% foreign subsidiary both beneficially belong to the Indian assessee and are taxed in India (branch profits when earned and subsidiary profits when repatriated to India), credit for foreign income tax paid is allowed in the case of foreign branch but not in the case of a foreign subsidiary. The decision as to which model should be to used for investing overseas(i.e. foreign branch model for investing

Sl No	Chapter of DTC	Clause DTC	Provisions of DTC	Changes suggested	Brief reasons for the suggested change
					overseas or a foreign subsidiary company model) is guided primarily by commercial considerations and not merely by tax considerations, and being forced to opt for the foreign branch model for tax reasons could make Indian entities un-competitive vis-à-vis entities of countries which allow underlying tax credit, it would be apt to allow underlying tax credit. With the proposed introduction of CFC Rules by the Code, the profits of certain foreign subsidiaries would be subjected to tax in India even if the same are not repatriated to India. The time at which Indian tax is levied on the profits of such foreign subsidiaries would, therefore, also be the same as the time at which Indian tax is levied on the profits of the foreign branch. However, going by the provisions of the Code as it is, underlying tax credit would still not be available in respect of the profits of foreign subsidiary. This would accentuate the discriminatory tax environment.