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INCOME-TAX BILL, 2025

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Basis of Charge: Important Changes, Hits & Misses

CA Dinesh Kanabar CA Ashish Agrawal

Overview

The Income-tax Bill, 2025, proposed to replace the Income-tax Act, 1961, aims to simplify tax law, reduce redundancies, and enhance compliance. The article examines key changes in Chapter II, 'Basis of Charge,' including the introduction of the 'tax year,' changes in the residency rules, and revisions in the provisions dealing with the deemed accrual of income in India. It also explores emerging issues such as the binding nature of guidelines for taxation of distribution of capital asset or stock-in-trade under Clause 8 (corresponding to Section 9B of the Act) and changes in 'royalty' taxation. These developments mark a significant shift in tax policy, necessitating careful evaluation of their practical and legal impact.

Introduction

The Income-tax Act, 1961, has evolved over a period of time with legislative wisdom. The legislation has undergone over 4,000 amendments to provide tax incentives, streamline the law, and resolve administrative challenges. However, the complexity of the legal jargons and cross-referencing through tangled web of Provisos and Explanations makes it recondite. The litigation around the tax laws has been alarming which requires the Government to introduce amnesty schemes periodically to settle the disputed amount.

Over the last decade, the Indian tax and regulatory ecosystem has undergone revamp across all the spheres viz. introduction of Companies Act, 2013, Goods and Services Tax Act, 2017, SEBI regulations, Foreign Exchange Management (Overseas Investment) Regulations, etc. In past, various attempts have been made to overhaul the direct tax law such as introduction of the Direct Taxes Code in 2010 and 2013. Realising the need of hour and matching the pace of reforms, the Government has invited stakeholders' comments on four aspects – (i) simplification, (ii) litigation reduction, (iii) redundancy of provisions and (iv) compliance reduction. Basis the same, the Government has now tabled the Income-Tax Bill, 2025 ('the Bill') which is proposed to replace the existing Act.

The Bill subsumes around 1,200 Provisos and 900 Explanations and deletes the age-old

With inputs from Rushi Shah

redundant provisions reducing the length of the law by nearly half. The Bill has replaced few legal jargons such as 'not withstanding', 'for the purposes of', 'in accordance with'. The insertion of tables and formulas simplify the reading of complex set of TDS and exemptions provisions.

The Bill, as introduced as Money Bill, shall pass the muster of select committee and Parliament before receiving the Presidential assent. The Bill is slated to be effective from April 1, 2026.

The Bill aims to simplify tax law using concise language. In interpretation of taxing statue, meaning and intention should be derived from clear and unambiguous wording. Hence, as a tax professional, it becomes imperative to analyse whether the simplified Bill leads to any deviation from existing legal position or continues with the same framework.

Basis of Charge – Core of the Act

The Supreme Court in the case of ***Govind Saran Ganga Saran vs. CIT***[1] explained the concept of tax levy to cover four key components: (a) Character of the imposition known by its nature which prescribes the taxable event attracting the levy, (b) clear indication of the Person on whom the levy is imposed and who is obliged to pay the tax, (c) the Rate at which the tax is imposed, and (d) Measure or value to which the rate will be applied for computing the tax liability. If the above components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy is fatal to its validity.

As far as income tax levy is concerned, Chapter II – 'Basis of charge' of the Act constitutes the foundation of levy, and encapsulates three main subjects of the Act viz., what is to be taxed, to whom does such income belong and from whom tax on such income should be realised or recovered.

Charge of Income-tax

Section 4 of the Act (corresponding to Clause 4 of the Bill) imposes charge of income-tax. As per section 4(1) of the Act, the income-tax is charged for the 'assessment year' on the total income of the 'previous year' at the rates prescribed under relevant Finance Act. Under the proposed Bill, the concept of 'previous year' shall be replaced by 'tax year', whereas the concept of 'assessment year' shall be eliminated. Thus, as per the Bill, charge of income-tax is fastened in the 'tax year' itself in respect of the total income of such tax year.

Section 4(2) of the existing law lays foundation for TDS and advance tax provisions. As per section 4(2) of the Act, in respect of income chargeable to tax, the TDS and advance tax provisions need to be adhered. The Supreme Court in the case of ***CIT vs. Eli Lilly & Co. (India) (P) Ltd.***[2], in the context of section 192 observed that the TDS provisions under Chapter XVII dealing with collection of taxes and the charging provisions of the Act form one single integral, inseparable code and, therefore, the provisions relating to TDS applies only to those sums which are "chargeable to tax" under the Act.

1. *[1985] 155 ITR 144*
2. *[2009] 312 ITR 225 (SC)*

Similarly, the Supreme Court in the case of ***G.E. India Technology Centre (P.) Ltd. vs. CIT***[3] held that no tax shall be deductible under section 195 of the Act in respect of software payments which were held not chargeable to tax under the Act read with applicable tax treaty. Following the 'Pay-as-you-earn' approach, advance tax/TDS is paid during the previous year.

Clause 4(5) of the Bill covers TCS in addition to the TDS and advance tax provisions. Accordingly, in respect of income chargeable to tax, the taxes can be collected in accordance with the TCS provisions. This leads to a question whether TCS provisions can be applied only to the transactions which are chargeable to tax and hence, the TCS levy can be denied in the cases where the transaction is not chargeable to tax e.g. TCS on remittance under Liberalised Remittance Scheme ('LRS'), purchase of motor vehicles, etc.

At this juncture, reference can be drawn from the recent Madras High Court decision in the case of ***ITO vs. Thanjavur District Central Co-operative Bank Ltd.***[4] dealing with constitutional validity of section 194N imposing TDS levy on withdrawal of cash from the banks and post-offices. The Madras High Court observed that the TDS provisions falling under Chapter XVII-B of the Act are machinery provisions. After considering the object and purpose of introduction of the provision, the High Court upheld the validity of the provisions.

Following this rationale, it may be contended that the TCS provisions are introduced to expand the tax base and identify the tax leakages. Hence, challenging the validity of the TCS levy may be difficult. However, the taxpayers shall be required to claim refund of excess TCS credit by filing return of income.

Residence in India

The tax liability in taxing jurisdiction depends upon the 'residency' and 'source' criteria. Residents are taxed on their global income, whereas non-residents are taxed only on income sourced within the jurisdiction.

Section 6 of the Act (corresponding to clause 6 of the Bill) deals with 'residential status' in India. As per the Act, the residential status of an individual can be defined based on two tests: (A) 182 days stay during the previous year, or (B) a twin condition of (i) 60 days stays during the previous year and (ii) 365 days in preceding four previous years. On fulfilment of the either of the test, an individual shall be considered as resident in India. However, in the case of citizen of India, or a person of Indian origin visiting India in any previous year, the '60' days test is replaced by '182' days condition. Thus, if an Indian citizen or person of Indian origin stays in India for 182 days or more during the previous year, he would be considered as resident individual as per the condition (A) itself and no need to test the stay in India during four preceding previous years. This results into redundancy of 365 days condition in preceding four years. The Bill clarifies that in such a case, only condition (A) (i.e. 182 days criteria) is to be tested.

In pursuit of eliminating the controversies regarding interpretations revolving around

3. *[2010] 327 ITR 456 (SC)*
4. *[2024] 465 ITR 286 (Mad.)*

legal jargons, the Bill has substituted few phrases. For an instance, Explanation 1(a) of section 6(1) of the Act, provides that in case of an Indian citizen leaving India for the purposes of employment outside India, the test of '60' days shall be replaced by '182' days. The Courts have held[5] that 'for the purposes of employment outside India' would also cover self-employment in addition to the employment under employer-employee relationship. Under the new Bill, the expression 'for the purposes of' is proposed to be replaced by 'for', which raises question over relevance of judicial precedents dealing with the provisions of the Act.

The Supreme Court in the case of ***ACIT vs. Surat Art Silk Cloth Manufacturers Association***[6] dealing with interpretation of 'charitable purpose' under section 2(15) of the Act, held that the proposition 'for' has many shades of meaning but when used with the active participle of a verb it means 'for the purpose of' and connotes the end with reference to which something is done. Similarly, in the case of ***Keshar Sugar Works vs. R. C. Sharma, AIR 1951 All 122***, it was held that the word 'for' implies 'for the purpose of' or 'in respect of'. Thus, a view can be adopted that substitution of 'for the purposes of' by 'for' under the new bill does not alter the legal position and the judicial precedents shall continue to apply. However, minute reading of the Bill leads to a question whether the days spent by Indian citizen abroad for exploration of employment opportunities can be treated as 'for employment outside India' under the new Bill?

Income deemed to be received

The existing section 7 dealing with 'income deemed to be received' and section 8 dealing with the year of taxability of 'dividend income' are merged into clause 8 of the Bill.

Notably, the buyback taxation has undergone changes vide Finance (No. 2) Act, 2024. Any payment by a company in respect of buyback taking place on or after October 1, 2024, is taxable as 'dividend' income, whereas the cost of acquisition of such shares shall be taken 'nil' in the computation of capital loss. However, there exists ambiguity regarding the year of taxability of such dividend income viz. year of declaration, payment of consideration, debit of shares from demat account or extinguishment of shares. Clause 7(2)(a) of the Bill clarifies that the dividend income arising from buyback shall be taxable in the year of payment.

Income on receipt of capital asset or stock-in-trade by partner/member from firm/ other association of persons or body of individuals ('specified entity')

Under section 9B of the Act, any receipt of capital asset or stock in trade by a partner or member from specified entity in connection with its dissolution or reconstitution, is taxable in the hands of such specified entity. Section 9B(4) and (5) of the Act empowers the Central Board of Direct Taxes to issue guidelines for removal of difficulty, with prior approval of the Government. Under the existing provisions, such guidelines are binding on the income-tax authorities as well as on the taxpayer.

5. *CIT vs. O. Abdul Razak [2011] 337 ITR 350 (Kerala)*
6. *[1979] 2 Taxman 501 (SC)*

Clause 8 of the Bill simplifies the language of the provision. The Bill provides detailed manner of laying the guidelines before the Parliament and consequences of any amendment/annulment by the Parliament. However, the proposed Clause 8 does not deal with the binding nature of such guidelines. Omission of 'binding force' of the guidelines raises a question regarding the binding nature of the guidelines on the taxpayer - whether the guidelines would stand in the same footing of a circular, which is neither binding to the taxpayer nor to the judiciary.

Income deemed to accrue or arise in India

As a classical understanding of the Indian tax law, the income of a non-resident would be taxable in India only if it is received or deemed received, accrued or deemed accrued in India. If the income of a non-resident is covered within the ambit of Section 9 of the Act, it is deemed to accrue in India. While the broad framework of section 9 of the Act continues under Clause 9 of the Bill, few minor changes are noteworthy.

The provisions dealing with taxation of business profits pursuant to 'business connection' and 'salary' income are simplified. However, this could have been an opportunity to prescribe clear provisions dealing with taxation of Significant Economic Presence (SEP). A non-resident creates SEP in India, if it exceeds prescribed threshold of transactions carried out with any person in India including provision of download of data or software in India or continuously solicits business activities or engaging in interaction with specified number of users in India. In such case, only so much of income as is attributable to such transactions or activities shall be deemed to accrue or arise in India.

However, no specific method has been prescribed to define how to determine the income attributable to such specified transactions or activities. Rule 10 of the Income-tax Rules, 1962, prescribes a method for determination of income in the case of non-residents. However, the Rule 10 is generic and gives the assessing officer authority to determine income taxable in India in a suitable manner. Such wide powers to assess the income is often subjected to contention between the Revenue and the taxpayers.

The provisions of section 9(1)(vii) of the Act dealing with the taxation of "royalty" are now covered under clause 9(6) of the Bill. As per the existing law, any payment of royalty by a resident would be deemed to accrue in India, except such royalty ***in respect of any right, property or information used or services utilized*** is paid for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India. The Bill eliminates the expression *'in respect of any right, property or information used or services utilized'* as far as payment by a resident is concerned, whereas the same expression is retained with respect to payment by a non-resident person. Elimination of this phrase seems to expand the scope of exclusion (i.e. reducing scope of taxability) and hence, any royalty payment by a resident for the purposes of a business or profession carried on by such person outside India or for making or earning any income from any source outside India, would not be taxable in India.

On the other hand, clause 9(6)(a)(iii) of the Bill states that the royalty paid by a non-resident for making or earning any income ***from any sources outside India***, would be deemed to accrue or arise in India. It may have two repercussions – (i) the royalty paid by a non-resident to another non-resident can be brought to tax in India, even though it has no nexus whatsoever with India, and

(ii) the royalty paid by a non-resident for making or earning any income from source in India would not be deemed to accrue or arise in India. However, this seems to be a drafting error, which is expected to be resolved in due course.

The definition of 'Royalty' as provided in clause 9(6)(b) of the Bill includes 'transfer' of all or any rights (*including granting of license*) in respect of patent, intention, model, design, secret formula or process or trademark or similar property. The scope of the definition is now expanded to cover 'grant' of all or any rights. The Authority of Advance Ruling in the case of ***Dassault Systems K.K., In re***[7] held that grant of 'licence' has been referred to in the royalty definition to dispel the possible controversy over a licence-whatever be its nature and can be characterized as transfer. The insertion of term 'grant' appears to be clarificatory in nature on the same lines.

Similarly, there has been a lot of litigation regarding whether the term 'secret' in the royalty definition applies only to 'formula' or entire limb of 'formula, process, trademark as well as similar property'. The language could have been simplified to reduce the litigation.

Conclusion

The Bill represents a significant effort to simplify Indian tax laws while maintaining the fundamental framework of the existing Income-tax Act, 1961. By reducing redundancies, consolidating provisions, and improving readability, the Bill aims to enhance compliance and minimize litigation. However, certain ambiguities—such as the interpretation of residency rules, taxation of digital transactions, and the scope of deemed income—may still lead to new disputes.

While the Bill avoids introducing radical reforms like Controlled Foreign Corporation (CFC), taxation or inheritance tax, it also does not address critical global tax developments, such as OECD's Pillar Two framework.

As the world follows India's growth story, the tax professionals will closely track the evolution of the new law. The real test of this Bill will be its practical application—whether it truly simplifies tax administration or merely shifts litigation to a new phase. As always, the coming years will determine whether these reforms succeed in creating a more transparent and efficient tax regime.

7. *[2010] 188 Taxman 223 (AAR – New Delhi)*

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