General

- The DTC, 2010 will come into effect from the Indian financial year 2012-13, i.e. from April 1, 2012

Tax Rates

Slabs	Rates
0 - 200,000	Nil
200,001 - 500,000	10%
500,001 - 1,000,000	20%
1,000,000 and above	30%

In the case of senior citizens Rs 200,000 may be read as Rs 250,000 and Rs 200,001 as Rs 250,001

Corporates

Particulars	Income Tax Act, 1961	Original DTC	Revised DTC
Domestic Company	33.22%	25%	30%
Foreign Company	42.23%	25%	30%
Branch Profits Tax	-	15%	15%
MAT	19.93% on Book Profits	0.25% / 2% of Gross Assets	20% on Book Profits
Dividend Distribution Tax ("DDT")	16.61%	15%	15%
Wealth Tax	1% on Net Wealth exceeding Rs. 3mn	0.25% on Net Wealth exceeding Rs. 500mn	1% on Net Wealth exceeding Rs. 10mn

International Tax

- The DTC or Treaty provision, whichever is more beneficial to tax payers will be applicable; except where General Anti-Avoidance Rules or Controlled Foreign Company Rules are invoked or Branch Profits Tax is levied
- Transportation charges paid to a non-resident by a resident or by the Government are taxable
- Transportation charges paid by non-residents to non-residents are taxable if they are in respect of carriage to or from a place in India
- Income arising from transfer of shares of a foreign company sought to be taxed in India if assets in India (held directly or indirectly by the company) represent atleast 50% of the fair market value of all the assets owned by the foreign company. The 50% test is to be applied at any time during the 12 months prior to transfer

- Branch profits tax to be levied on income attributable directly or indirectly to a Permanent Establishment or immovable property situated in India. Permanent Establishment is defined in the same way as in Treaties and includes one day Service PE, (substantial) equipment PE and insurance agent PE
- Presumptive taxation scheme continued with no change in the rates except in the case of non-residents engaged (a) in the business of providing services / supplying plant and machinery in connection with prospecting for, or extraction or production of, mineral oil or natural gas which has been increased from 10% to 14%, (b) in the case of business of operation of ships, the rate has been increased from 7.5% to 10% and (c) in case of business of operation of aircrafts, the rate has been increased from 5% to 7%
- Definition of royalty is expanded and withholding tax rate is increased from 10% to 20%, both for royalty and fees for technical services
- Head Office Expense - Head office expenditure of a branch of a foreign bank would be allowable to the extent of 0.5% of total turnover or gross receipts of business in India

Residential Status

Companies having a place of effective management in India at any time in the year will be considered as resident in India

Income from Business

- MAT continues to be levied on book profit
- MAT credit reinstated and allowed to be carried forward up to 15 years
- SEZ Developers to pay MAT and DDT
- SEZ units also now brought in the ambit of MAT
- Tax holiday for infrastructure companies grandfathered for projects eligible till 31 March, 2012
- Tax holiday for SEZ developers grandfathered for projects notified till 31 March, 2012
- Tax benefits allowed to SEZ units starting operations before 31 March, 2014
- Tax deductible expenditure to be allowed as deduction on depositing tax with the tax authorities. The two year limit for payment of tax withheld as a condition for claiming deduction of the underlying expenditure is removed
- In-house R&D expenditure qualifies for 200% of weighted deduction
- Amount remaining in block of assets even after transfer of all assets in that block eligible for depreciation
- Cascading effect of dividend distribution tax on multilayered corporate structure is mitigated. The provision requires more clarity
- Liberal loss offset rules prescribed with indefinite carry forward
- Deduction allowed for certain specified expenses such as non compete payments, premium paid for obtaining any asset on lease, etc. over a period of 6 years on straight line basis
- In case of finance lease, the lessee would be the deemed owner of business capital asset and would be allowed to claim depreciation on the same.

- Advance received under long-term lease will be considered as gross earnings. Similarly deduction will be available at the time of refund of such advance.

Capital gains

- Securities Transaction Tax ("STT") to continue
- No capital gains tax on sale of equity shares of a company or unit of an equity oriented fund held for more than one year if STT is paid on the transfer
- Capital gains tax payable only on 50% of the gains in case equity shares of a company or unit of an equity oriented fund is held upto one year if STT is paid on the transfer
- Fair market value of the asset as on 1 April, 2000 to be substituted for purchase price of the asset at the option of the tax payer
- Cost of acquisition of asset to be treated as Nil if it cannot be determined or ascertained
- Cost of acquisition of assets acquired on retirement from unincorporated body prescribed
- Capital gains on transfer of original asset exempt if residential house is acquired; provided not more than one residential house is owned on the date of transfer of original asset
- The roll over provisions has been trimmed to limit reinvestment in residential property on transfer of any investment asset except agricultural land. The capital gains exemption available on reinvestment shall stand withdrawn if, besides other conditions, the residential house so purchased is transferred within a period of one year, as against three years as specified in the Income-tax Act, 1961 (“Current Act”).

Merger and acquisitions/business restructuring

- The base date for the purpose of substitution of cost by fair market value ("FMV") has been shifted from April 1, 1981 to April 1, 2000
- The event of taxability in case of conversion of an investment asset into a business trading asset has been preponed to the year of conversion instead of the year of sale under the current Act.
- Full value of consideration in case of transfer of land and building has been specified to be the stamp duty value in all cases, as against the current Act where a revenue officer could refer the matter to a Valuation Officer to determine the value of the land and building
- Under the current Act, it is provided that exemption on holding – subsidiary transfers shall be withdrawn and exempted gain taxed in the year of transfer of original asset if the conditions of exemption were violated. The DTC seeks to tax such exempted gain in the year in which the conditions are violated. Hence, the rigors of revising past years returns has been done away with
- The DTC narrows the definition of amalgamation and demerger to include only reorganisation between “residents”, thereby not facilitating tax neutral cross border transactions
- Pursuant to the demerger, the DTC specifically provides for issue of equity shares to shareholders of the demerged company, as against the current Act where the nature of shares was not provided
- The DTC provides for a liberalized regime for carry forward of loss, as compared to the current law and conditions for carry forward such as nature of business, continuation of business for a period of three years, etc. have now been done away with
- The DTC provides for carry forward of losses of the demerged unit upon satisfaction of the business continuity test. The current Act does not contain such a condition

- In case of succession of a sole proprietorship, or a partnership firm, by a company, the DTC provides for carry forward of losses, subject to fulfillment of prescribed conditions. This was not facilitated under the current law
- New provisions have been introduced in the DTC which expressly provide for taxation of income for payments recieved in case of death or retirement of a participant, being a member of an unincorporated body

Employment Income

- Exempt Exempt Exempt ("EEE") method of taxation restored for
  - Provident Fund under Provident Funds Act, 1925
  - Any other provident fund set up by the Central Government and notified in this behalf
  - Approved Superannuation Fund
- Payment of life insurance premium, health insurance premium, tuition fees qualify for deduction to the extent of Rs. 50,000.
- Deduction for contribution to approved funds to the extent of Rs 100,000.
- Medical reimbursement exemption limit increased from Rs 15,000 to Rs 50,000.
- The scope of taxation has been widened for the policyholders. The amount received from the life insurance policy would be subject to tax as 'Income from Residuary Sources' unless:
  - distribution tax of 5% has been paid by the insurance company; or
  - it is received on maturity; and
  - received on maturity subject to satisfaction of certain conditions such as premium paid for any of the years not exceeding 5% of the capital sum assured.

Income from House Property

- Two or more persons owning a house property to be considered as an Association of Persons if their shares are not definite and ascertainable
- Income from house property to be computed only if the property is let out
- Even if letting out of house property is in the nature of trade, commerce or business, the rental income therefrom will be taxable as Income from House Property (certain exceptions provided)
- Interest on loan against self occupied house property is deductible to the extent of Rs. 150,000

General Anti-Avoidance Rule ('GAAR')

- No substantial changes in GAAR provisions as introduced in DTC 2009
- The DTC continues with the provisions of GAAR wherein Commissioner of Income-tax ("CIT") has been empowered to declare an arrangement as impermissible if it has been entered into with the objective of obtaining a tax benefit and lacks commercial substance. The arrangement would be presumed to be for the purpose of availing tax benefits even if the main purpose of a part or step of the arrangement was to avail tax benefits.
- Any arrangement would be presumed to be for availing tax benefits unless the tax payer demonstrates that availing tax benefits was not the main objective of the arrangement

- CIT to determine the tax consequences on invoking GAAR. Order of CIT will be forwarded to the tax payer and to the CIT of the other party to the arrangement; such CIT to proceed against other party to apply GAAR
- The provisions of GAAR to apply subject to such conditions and manner as may be prescribed
- The forum of Dispute Resolution Panel available in cases wherein GAAR provisions are invoked
- GAAR to override provisions of Double Taxation Avoidance Agreements

Controlled Foreign Company ("CFC")

- Provisions related to CFC introduced
- CFC provisions attracted when a foreign company is controlled by resident tax payers. Control has been defined where one or more persons resident in India, individually or collectively, directly or indirectly, hold shares carrying not less than 50% of the voting power or capital of the company. An additional condition is that the entity is a resident of a country with lower level of taxation, i.e. the amount of tax payable in foreign country is less than 50% of the corresponding tax payable under the DTC
- The net profit earned by the CFC will be attributed (and not only the passive income) to the resident tax payer based on the percentage holding and for the period such percentages are held
- CFC provisions not triggered in case the foreign company is listed on a stock exchange or is engaged in "active trade or business" (subject to certain conditions) or specified income does not exceed Rs 2.5 mn
- Strict definition of concept of "active trade or business". Where 50% or more income of an offshore entity is derived from sale of goods/services to controlled corporations, it will not be considered as having engaged in active trade or business
- Value of shares in CFC to be included in taxable wealth
- Underlying foreign tax credit mechanism not provided

Wealth Tax

- Only non profit organizations exempted from levy of Wealth Tax
- New categories of assets introduced for levying wealth tax such as
  - Archaeological collections, drawings, paintings, sculptures or any other work of art
  - Watch having value in excess of Rs 50,000
  - Equity or preference shares held in CFC

Transfer Pricing

- Introduction of Advance Pricing Arrangements to provide certainty of tax liability with regard to international transactions
- Safe Harbour provisions introduced. However, detailed rules yet to be prescribed
- Definition of Associated Enterprise broadened to include enterprises based on any specific or distinct location

Return and Assessment

- Tax payer to file a consolidated return of its tax bases, which includes return of income, net wealth and dividend/income distributed in specified categories of taxpayers
- The forum of Dispute Resolution Panel to be available to any class of persons as may be prescribed
- The scope of reassessment by tax authorities has been significantly broadened.
- The scope for revising an order prejudicial to the interest of revenue is significantly enlarged by introducing deeming situations like cases where proper verification is not done or claim is not probed by the assessing officer
- Rectification applications to be disposed off within six months from the end of the month in which such application is received. Appeal can be filed if rectification application is not disposed off

Appeals

- Tribunal / Commissioner (Appeals) cannot condone delay in filing appeal if the delay exceeds one year
- Power of Commissioner (Appeals) increased to consider any matter which was not considered by the Assessing Officer
- Appeals against order of Commissioner (Appeals) lies before Authority for Advance Rulings in case of public sector companies
- Instances wherein CIT can exercise the powers to revise orders prejudicial to revenue significantly broadened
- Powers of CIT to revise orders in favor of tax payers restored by the DTC

Tax Deduction at Source

- The rates for deduction of tax at source on payments to residents range from 2% to 30%
- The rates for deduction of tax at source on payments to non residents range from 10% to 30%
- Failure to furnish Permanent Account Number continues to result in deduction of tax at a higher rate of 20%
- Tax Officers authorized to issue certificates for deduction of tax at Nil/lower rate
- Central Government to notify instances wherein payer is required to report payments made without deduction of tax

Financial Services

<u>Foreign Institutional Investors ("FII")</u>

- Income earned by FIIs to be taxed as capital gains
- Payments made to FIIs as a consideration for sale of listed securities shall not be subject to withholding tax

<u>Mutual Funds</u>

- Distribution Tax of 5% to be levied on distribution of income by an Equity Oriented Mutual Fund. Such income shall be exempt in the hands of the investors.
- Income distributed by funds other than Equity Oriented Mutual Fund will be taxable in the hands of the investors and not subject to levy of distribution tax

Venture Capital Funds ("VCF") / Venture Capital Company ("VCC")

- Code retains the existing tax regime applicable to VCF / VCC i.e. only in respect of investments of VCF / VCC in the nine specified sectors
- Income of VCF / VCC would be exempt and taxable in the hands of the investor in the VCF / VCC in the same manner on receipt basis

Trust taxation

- Provisions have been simplified
- Differential tax regime for determinate and in-determinate trusts removed
- Provisions relating to taxation of business income of trust at maximum marginal rate dropped

Insurance Companies

- Profits of life insurance business shall be the profits determined in shareholders' account (subject to certain specified adjustments) and taxable at 30% (as against 12.5% earlier)
- Profits of other insurance business shall be the profits disclosed in annual accounts, subject to certain prescribed adjustments
- Insurance/reinsurance premium received by a non-resident entity for covering risk in India shall be taxable at the rate of 20%
- 5% tax rate has been proposed on the amount of income distributed by life insurance company to the policyholders of an 'approved equity oriented life insurance scheme'. This tax seems to be targetted towards ULIP products

Banking Companies

- The deduction for amounts credited to provision for bad and doubtful debts account shall be restricted to 1% of aggregate average advances computed in the prescribed manner, subject to fulfilment of prescribed conditions