



Info Capsule

CONSTITUTION OF TASK FORCE FOR DRAFTING A NEW DIRECT TAX LEGISLATION¹

During the Rajaswa Gyan Sangam held on September 1-2, 2017, the Prime Minister Shri Narendra Modi had observed that the Income-tax Act, 1961 (the Act) was drafted more than 50 years ago and it needs to be re-drafted.

Accordingly, in order to review the Act and to draft a new Direct Tax Law in consonance with economic needs of the country, the Government has constituted a Task Force with the following Members:

- (i) Shri Arbind Modi, Member (Legislation), CBDT - Convener
- (ii) Shri Girish Ahuja, practicing Chartered Accountant and non-official Director, State Bank of India;
- (iii) Shri Rajiv Memani, Chairman & Regional Managing Partner of E&Y;
- (iv) Shri Mukesh Patel, Practicing Tax Advocate, Ahmedabad;
- (v) Ms. Mansi Kedia, Consultant, ICRIER, New Delhi;
- (vi) Shri G.C. Srivastava, Retd. IRS (1971 Batch) and Advocate.

Dr. Arvind Subramanian, Chief Economic Adviser (CEA) will be a permanent Special Invitee in the Task Force.

The Terms of Reference of the Task Force is to draft an appropriate Direct Tax Legislation keeping in view:

- (i) The direct tax system prevalent in various countries,
- (ii) The international best practices.
- (iii) The economic needs of the country and
- (iv) Any other matter connected thereto.

The Task Force shall set its own procedures for regulating its work and shall submit its report to the Government within six months.

CABINET APPROVES SETTING UP OF THE 15th FINANCE COMMISSION²

The Union Cabinet chaired by the Prime Minister Narendra Modi has approved the setting up of the 15th Finance Commission. Under Article 280 (1) of the Constitution, it is a Constitutional obligation. The Terms of Reference for the 15th Finance Commission will be notified in due course of time.

¹ Available at: <http://pib.gov.in/newsite/erelease.aspx>

² Available at: <http://pib.gov.in/newsite/erelease.aspx>

Background:

Article 280(1) of the Constitution lays down that a Finance Commission (FC) should be constituted "...within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary...". In keeping with this requirement, the practice has generally been to set up next Finance Commission within five years of the date of setting up of the previous Finance Commission.

Fourteen (14) Finance Commissions have been constituted in the past. The 14th Finance Commission was set up on 02.01.2013 to make recommendations covering the period of five years commencing on April 1, 2015. The Commission submitted its Report on December 15, 2014. The recommendations of the 14th Finance Commission are valid up to the financial year 2019-20. In terms of Constitutional provisions, setting up the 15th Finance Commission, the recommendations of which will cover the five years commencing on April 1, 2020, has now become due.

ORDINANCE TO AMEND THE INSOLVENCY AND BANKRUPTCY CODE, 2016 PROMULGATED³

Ordinance Aims At Putting In Place Safeguards To Prevent Unscrupulous, Undesirable Persons From Misusing Or Vitiating The Provisions Of The Code.

The Government of India promulgated today the Ordinance to amend the Insolvency and Bankruptcy Code, 2016 (the Code). Earlier the President of India had given his assent to the Ordinance to amend the Code.

The Ordinance aims at putting in place safeguards to prevent unscrupulous, undesirable persons from misusing or vitiating the provisions of the Code. The amendments aim to keep-out such persons who have wilfully defaulted, are associated with non-performing assets, or are habitually non-compliant and, therefore, are likely to be a risk to successful resolution of insolvency of a company. In addition to putting in place restrictions for such persons to participate in the resolution or liquidation process, the Amendment also provides such check by specifying that the Committee of Creditors ensure the viability and feasibility of the resolution plan before approving it. The Insolvency and Bankruptcy Board of India (IBBI) has also been given additional powers.

It may be recalled that the Regulations by the IBBI were also amended recently to ensure that information on the antecedent of the applicant submitting the Resolution Plan along with information on the preferential, undervalued or fraudulent transactions are placed before the Committee of Creditors in order for it to take an informed decision on the matter.

Along with other steps towards improving compliances, actions against defaulting companies to prevent misuse of corporate structures for diversion of funds, reforms in the banking sector, weeding-out of unscrupulous elements from the resolution process is part of ongoing reforms initiated by the Government. These would help strengthen the formal economy and encourage honest businesses and budding entrepreneurs to work in a trustworthy, predictable regulatory environment.

The Ordinance amends Sections 2, 5, 25, 30, 35 and 240 of the Code, and inserts new Sections 29A and 235A in the Code.

Gist of the amendments is given below:

(i) Clause (e) of Section 2 of the Code has been substituted with three Clauses. This would facilitate the commencement of Part III of the Code relating to individuals and partnership firms in phases.

(ii) Clause (25) and (26) of Section 5 of the Code which define "Resolution Plan" and "Resolution Applicant" are amended to provide clarity.

(iii) Section 25(2) (h) of the Code is amended to enable the Resolution Professional, with the approval of the Committee of Creditors (CoC), to specify eligibility conditions while inviting Resolution Plans from prospective Resolution Applicants keeping in view the scale and complexity of operations of business of the Corporate Debtor to avoid frivolous applicants.

³ Available at: <http://pib.gov.in/newsite/erelease.aspx>

(iv) Section 29A is a new Section that makes certain persons ineligible to be a Resolution Applicant. Those being made ineligible inter alia include:

- Wilful Defaulters,
- Those who have their accounts classified as Non-Performing Assets (NPAs) for one year or more and are unable to settle their overdue amounts include interest thereon and charges relating to the account before submission of the Resolution Plan,
- Those who have executed an enforceable guarantee in favour of a creditor, in respect of a Corporate Debtor undergoing a Corporate Insolvency Resolution Process or Liquidation Process under the Code,
- and connected persons to the above, such as those who are Promoters or in management of control of the Resolution Applicant, or will be Promoters or in management of control of Corporate Debtor during the implementation of the Resolution Plan, the holding company, subsidiary company, associate company or related party of the above referred persons.

(v) It has also been specifically provided that CoC shall reject a Resolution Plan, which is submitted before the commencement of the Ordinance but is yet to be approved, and where the Resolution Applicant is not eligible as per the new Section 29A. In such cases, on account of the rejection, where there is no other plan available with the CoC, it may invite fresh resolution plans.

(vi) Section 30(4) is amended to explicitly obligate the CoC to consider feasibility and viability of the Resolution Plan in addition to such conditions as may be specified by IBBI, before according its approval.

(vii) The Sale of Property to a person who is ineligible to be a Resolution Applicant under Section 29A has been barred through the amendment in Section 35(1) (f).

(viii) In order to ensure that the provisions of the Code and the Rules and Regulations prescribed thereunder are enforced effectively, the new Section 235A provides for punishment for contravention of the provisions where no specific penalty or punishment is provided. The punishment is fine which shall not be less than one lakh rupees but which may extend to two crore rupees.

(ix) Consequential amendments in Section 240 of the Code, which provides for power to make Regulations by IBBI, have been made for regulating making powers under Section 25(2) (h) and 30(4).

Team ICSI

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