

Draft Direct Taxes Code, 2009 - Send Your Submission to protect the Right to Information Act- Here's a Sample

September 29, 2009

Dear all,

Readers will recollect I had circulated an email alert about the Draft Direct Taxes Code, 2009 (The Draft Code) hinting at the possibility of amending the Right to Information Act, 2005 (RTI Act). This Draft Code seeks to replace the Income Tax Act of 1961 (IT Act). The Draft Code along with a discussion paper that explains its new proposals has been uploaded on the website of the Ministry. Readers may access the Draft Code and the discussion paper at: <http://finmin.nic.in/DTCCode/index.html> The Ministry has invited comments from people on the provisions of the Draft Code. **The last date for sending submissions is tomorrow- 30th September, 2009.** Many stakeholders may have already posted comments on the provisions of the Draft Code. We urge you to post a submission on the Ministry's website in order to ensure that the pre-eminent position of the RTI Act remains unaltered by the Code.

The Draft Code and the Right to Information Act:

The discussion paper attached to the Draft Code hints at a possible amendment to the RTI Act. The relevant paras in the discussion paper reads as follows:

"K) Disclosure of information relating to assessee

19.19 The tax administration receives a large volume of information relating to an assessee furnished by him and by third party sources. These information, essentially, relate to his financial and commercial transactions. It is part of his right to privacy. However, the Right to Information Act enables a person to obtain commercially sensitive and private information relating to any other person which may have the effect of causing financial, commercial or personal injury to such other person. The disclosure of such information to third parties/ competitors also inhibits full compliance with tax laws.

19.20 Internationally, countries prohibit the disclosure of information furnished to, or obtained by, the tax administration, regardless of the law relating to the right to information. However, the information is allowed to be shared with other enforcement agencies to the extent it is necessary in public interest.

19.21 Steps will, therefore, be taken to amend the Right to Information Act prohibiting disclosure of information relating to any assessee to any third party except in the circumstances provided under the Code." (pages A 59-60)

In our email alert of 22nd August we had posted an analysis of these paras from the discussion paper and the relevant provisions of the Draft Code. (In order to access that email alert please click on:

http://www.humanrightsinitiative.org/programs/ai/rti/india/national/2009/possible_amendment_of_rt_i_act_2005_email_alerts/draft_direct_tax_code_2009_hints_at_amendment_of_the_rti_act_aug_2_2_2009.pdf)

What does the Draft Code say about the disclosure of information about assessee?:

That the IT Act requires all income tax returns to be kept confidential is a misconception. Confidentiality was the principle in the initial version of the IT Act. However the law was amended in 1964 to allow disclosure of any information about an assessee to any person in the public interest. However this provision has been rarely used to allow disclosure of IT returns to third parties other than courts and law enforcement officers. This principle of disclosure in public interest is mentioned in the Draft Code also. The wording of the relevant provision has been improved slightly as compared to the IT Act:

" 146(1) No information in respect of any assessee shall be provided to any person by,- (a) the Board;

(b) any officer, authority or executive and ministerial staff, in the secretariat, attached office or subordinate office of the Board; or

(c) any person, agency or authority engaged in any manner in the administration of this Code.

(2) However, the Board, or any person specified by it by an order in this behalf, may furnish, or cause to be furnished, any information in respect of an assessee to any other person performing any functions under-

(a) any law relating to the imposition of any tax, duty or cess, or to dealings in foreign currency; or

(b) any other law as the central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf.

(3) The information referred to in sub-section (2) shall be only such information which fulfills the following conditions-

(a) the information is received or obtained by the Board, or any person specified by it by an order under that sub-section, in the performance of its or his functions under this Code; and

(b) the information is, in the opinion of the person furnishing the information, necessary for the purpose of enabling the other person receiving the information to perform the functions under the laws referred to in that sub-section.

(4) The Chief Commissioner or Commissioner may furnish, or cause to be furnished, **to any person** any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Code, if-

(a) the person makes an application to the Chief Commissioner or Commissioner in the prescribed form; and

(b) the Chief Commissioner or Commissioner is satisfied that it is in the public interest so to do.

(5) The decision of the Chief Commissioner or Commissioner under sub-section (4) shall be final and shall not be called in question in any court of law.

(6) The Central Government may, regardless of anything to the contrary contained in this section, direct by order notified in the Official Gazette that no information shall be furnished under sub-section (2) or sub-section (4) in respect of such matters relating to such class of assessee, or to such authorities, as may be specified in the order." **[pages B93-94, emphasis added]**

What are the implications of these disclosure provisions?:

There is no reference to the RTI Act anywhere in the Draft Code. If this Draft Code becomes law access to all tax-related information (and not merely IT returns) may be accessible only under this Code as it will be treated as a law passed later in date to the RTI Act. This means:

a) any tax-related information may not be accessible under the RTI Act at all;

b) the simple fee rules and specific time limits of the RTI Act may not be applicable to information requests made under the Code;

c) there may not be any time limit for disposal of access requests unless explicitly provided for in the Rules to be formulated after the Code is enacted;

d) the appeals and complaints procedures of the RTI Act may not be available to an applicant who has been denied information under the Code;

e) the decision of the authorities regards refusal of access cannot be challenged in any court of law; and

f) the penalty and compensation procedures under the RTI Act may not be available to act as a deterrent against wrongful denial of information under the Code.

In short the RTI Act will be stunted as far as its outreach to the tax administration in the country is concerned.

RTI Act is adequate for protecting the confidentiality of assessee-related information:

The Draft Code and the discussion paper attached to the Draft Code betray a lack of understanding of the protection provided by the RTI Act to assessee-related information. Section

8(1)(d) and 8(1)(j) of the RTI Act are adequate protection for maintaining the confidentiality of the information relating to individual and corporate assesseees. Both provisions contain public interest overrides individually and are also subject to the overarching public interest override under section 8(2). **There is no reason why the Draft Code should supplant the RTI Act with a completely different access regime and one that is weak with no scope for redress.**

Why is it important to maintain the supremacy of the RTI Act?

The IT Act in the present and the Draft Code in future seek to regulate tax-related affairs. Regulating tax-related matters is an essential part of the overall administrative regime established in the country. The RTI Act seeks to engender a regime of transparency throughout the country and create an informed citizenry so that the people may hold the State and its instrumentalities accountable. In other words, this law establishes transparency and openness as the overarching philosophy of the administration at all levels thereby replacing the regime of secrecy that had developed under the Official Secrets Act since colonial times. There is no justifiable reason why the Income Tax administration should be kept outside the purview of this regime of transparency. The RTI Act overrides all other laws to the extent of inconsistency. There is no good reason why newer laws meant to regulate the affairs of citizens vis-a-vis the State should strive to remain outside its ambit. **The Draft Code should contain a clause stating that all information may be provided in accordance with the provisions of the RTI Act and all contrarian clauses should be deleted. This can take care of any ambiguity that may arise regards the interaction between the provisions of the RTI Act and the Draft Code after its enactment.**

What can we do to make this happen?:

All of us interested in ensuring that the regime of transparency established by the RTI Act remains supreme must send our submissions to the Ministry of Finance against this attempt to stunt the RTI Act. The easiest way is to visit the webpage of the Ministry and post our submission regards RTI. A sample submission is provided below for your use.

Sample Submission:

"Dear Mr. Finance Minister,

I/We* am/are* (a) citizen(s)* of India vested with the fundamental right to seek and obtain information from government and its agencies. The Right to Information Act (RTI Act) passed by Parliament in 2005 gives effect to this fundamental right and establishes a regime of transparency covering all levels of government. This law establishes openness and disclosure as the norm of governance. Secrecy is permitted only in a few exceptional circumstances. The RTI Act overrides all other laws to the extent of inconsistency. Indeed this position of supremacy granted to the RTI Act must be preserved and not whittled away bit by bit. That would defeat the very purpose of the RTI Act.

The Draft Direct Taxes Code, 2009 (Draft Code) has been placed on the website of your Ministry for public consultation. I/We* congratulate your government for seeking people's views about its provisions.

I/We* strongly believe that the Draft Code must be brought in line with the transparency regime established by the RTI Act. I/We* recommend that sub-sections (5) and (6) of section 146 be deleted and the existing sub-section (4) of this section be substituted with the following:

"(4) Any information relating to any assessee received or obtained by any income-tax authority in the performance of his or her functions under this Code may be furnished to any person in accordance with the provisions of the Right to Information Act. (No. 22 of 2005)".

Thanking you,

Yours sincerely,

(Name of the person submitting)

NO AMENDMENTS - LEAVE OUR RTI ACT ALONE

(*please delete whichever is inapplicable)"

How do I upload my submission?:

Please follow the following procedure:

- 1) In order to access the submission template click on: <http://finmin.nic.in/DTCODE/query.asp> (If this does not work, please copy and paste the URL in the address box of your browser)
- 2) Do not forget to enter your name, address and email id - these are compulsory fields. Your submission may not be accepted if you do not give these details.
- 3) Under the field 'Section of the Code' type in '146'.
- 4) Copy and paste the above mentioned sample submission in the 'Post your comments' box. Alternately you may paste a submission in your own words.
- 5) Please enter the alphanumeric captcha code in the next box. If you see capital letters then please use caps lock before keying them in.
- 6) If you have satisfactorily completed all these steps then click 'submit'.

If nothing works, just email your submission to the Minister for Finance at: pkm@sansad.nic.in

Can I send my submission in hard copy?

Of course you may send your submission in hard copy. Please write/copy the sample submission on a post card or on a sheet of paper and post/courier to:

Shri Pranab Mukherji

Hon'ble Minister for Finance

Ministry of Finance

Government of India

North Block

New Delhi - 110 001

Please remember to send your submissions by tomorrow (30th September, 2009) latest.

In order to access our previous email alerts please click on:

<http://www.humanrightsinitiative.org/programs/ai/rti/india/national.htm> You will find the links at the top of this web page. If you do not wish to receive email alerts please send an email to this address indicating your refusal to receive email alerts.

Thanks

Venkatesh Nayak

Programme Coordinator

Access to Information Programme

Commonwealth Human Rights Initiative

B-117, I Floor, Sarvodaya Enclave

New Delhi- 110 017

tel: 91-11- 2686 4678/ 2685 0523

fax: 91-11- 2686 4688

website: www.humanrightsinitiative.org

alternate email: nayak.venkatesh@gmail.com