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Tax Flash News

15 October 2025

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NITI Aayog recommends decriminalisation and rationalisation of criminal offences under Income-tax law to foster trust-based governance

Executive summary

On 10 October 2025, the ‘Consultative Group on Tax Policy’ of the NITI Aayog—the Government of India's public policy think tank—released a paper titled *“Towards India's Tax Transformation: Decriminalisation and Trust-based governance”* [1] (the Paper), as part of the NITI Tax Policy Working Paper Series.

The Paper emphasises on paradigm shift in India’s tax policy from *fear-based enforcement* to *trust-based governance* and a *compliance-first culture*. It reviews the criminal provisions in the Income-tax Act, 2025 (ITA 2025), highlights over-criminalisation, and recommends a framework for decriminalisation and proportionate sanctions to create fairer and more business-friendly tax compliance.

Out of the 35 criminal offences identified under the ITA 2025:

- 12 offences are proposed to be fully decriminalised and addressed through civil or monetary penalties.

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[1] Report_Tax_Policy_Working_Paper_Series_II.pdf – accessed on 10 October 2025

- 17 offences to retain criminal liability only for fraudulent or *mala fide* intent, removing sanctions for good faith procedural lapses.
- Six core offences, involving deliberate, high-value misconduct to remain criminal, subject to proportionate punishments.

This Flash News captures some of the significant points from the Paper.

Background

The Income-tax Act, 1961 (ITA 1961) uses criminal law to ensure tax compliance, as monetary penalties are considered inadequate deterrents. However, over the years this approach has been viewed as excessive and disproportionate, especially in criminalising minor non-compliance, creating uncertainty for taxpayers and hindering business operations.

The Government of India is adopting a trust-based governance model to improve tax compliance, by introducing ITA 2025 to replace ITA 1961 from 1 April 2026.

While ITA 2025 marks significant progress (such as decriminalising 13 offences), the Paper recommends that ITA 2025 should further minimise the use of criminal sanctions for tax compliance. The ITA 2025 continues to criminalise 35 actions and omissions, with all offences punishable by rigorous imprisonment (one to seven years) and mandatory fines. Judicial discretion is minimal, repeat offenders face stringent penalties (including enhanced punishments of up to seven years), and most fines are unspecified and left to the court's judgment.

The framework for criminalisation in ITA 2025 ascribes three degrees of intent for criminal offences - wilfully, knowingly, and fraudulently. Assigning varying degrees of intent is important to ensure proportionate responses to different offences. However, the punishments assigned to offences in ITA 2025 do not always reflect this proportionality.

The Paper uses a principle-based assessment model guided by four key principles, i.e. criminalisation must:

- protect a fundamental societal value
- address a clear, direct, and substantial harm
- be the only efficient and effective solution
- be a proportionate response to harm

In addition, the Paper has considered the following key points when making recommendations:

- Avoid duplication and ensure consistency
- Assess fiscal impact and evaluate justice system capacity and effectiveness
- Align with constitutional rights and avoid criminalising protected activities
- Ensure clear and precise drafting
- Adopt alternative forms of punishment (community service, monetary penalties, diversion programs), especially for first-time offenders
- Mandate periodic review of criminal provisions

The Paper also acknowledges international approaches to criminalisation in tax enforcement. Various countries limit criminal prosecution through methods such as setting high thresholds for prosecution (e.g., proof of fraudulent intent or significant harm as in the USA), distinguishing between degrees of culpability (as in Germany), and prioritising civil remedies before criminal action (as in the UK and Japan).

Key recommendations

Category A: Decriminalisation

The Paper has identified certain offences which are typically procedural lapses, often without malicious intent, and therefore suitable for decriminalisation. Criminalising minor or technical non-compliances and unintentional or *bona fide* mistakes risks disproportionate enforcement. Civil penalties in such cases offer a more effective, timely, and appropriate alternative.

Some of the offences, currently punishable with rigorous imprisonment and fine, recommended to be decriminalised are listed below:

- Failure to pay to credit of Central Government tax deducted and collected at source (sections 476 and 477)
- Wilful attempt to evade tax by creating circumstances that enable such evasion (section 478(4)(d))
- Failure to furnish returns of income within the prescribed time limit (section 479)

- Failure to produce the accounts and documents, or get them audited, as required by the tax officer (sections 480 and 481)

The Paper has suggested omitting the aforesaid sections and amending the relevant provisions to provide for penalty, wherever required.

<u>Category B</u>: Partial decriminalisation/ selective criminalisation

The Paper has identified certain offences which are a direct threat to the country's fiscal integrity and justify criminal prosecution. However, to avoid overreach and ensure proportionate treatment based on intent and severity, criminal sanctions should be confined to deliberate violations and fraudulent conduct, regardless of monetary thresholds. *Bona fide* errors without malicious or fraudulent intent should be decriminalised and addressed through imposition of penalty.

Accordingly, following recommendations have been suggested for some of the offences, which are currently punishable with rigorous imprisonment and fine:

Key provisions under ITA 2025	Recommendations
1. Wilful attempt to evade tax by (a) under-reporting income; or (b) making a false, or omitting the relevant, entry or statement in the books of account (sections 478(1) and 478(4)(b)/(c)/(d)) 2. Knowingly making a false statement in any verification or delivering a false account (section 482)	• Amend relevant provisions to restrict prosecution to only wilful or fraudulent acts. • Increase monetary threshold for differing punishments from INR 25 lakh to INR 1 crore, aligning with contemporary fiscal standards. • For cases involving amount less than INR 1 crore, penalty to be confirmed by the Income-tax Appellate Tribunal before initiating prosecution.

The Paper further proposes rationalisation of criminal liability where any information or document is provided by a public servant, in contravention of a notification issued by the Central Government prohibiting the same[2]. Only deliberate disclosures that risk sensitive investigations should be criminalised; other violations warrant internal disciplinary action or administrative penalties.

[2] Section 494

Category C: Retain criminalisation

The Paper has identified certain offences which are intentional and *mala fide* actions and therefore, warrant criminalisation. Retaining following criminal provisions is important to support effective tax enforcement and uphold the integrity of lawful processes:

- Fraudulent removal, concealment, transfer or delivery of property to prevent tax recovery (sections 475)
- Falsification of books of account or document, etc. with the intent to enable any other person to evade tax (section 483)
- Knowingly inducing or abetting any person to make or deliver a false account, statement or declaration relating to any income chargeable to tax (section 484)

Other recommendations

- *Rationalisation of punishments* - Remove mandatory minimum sentences to allow proportionate punishment and allow judicial discretion to choose between fines and imprisonment, aligning with Bharatiya Nyaya Sanhita (BNS)[3] or other relevant civil laws to allow courts to tailor sentencing based on the facts of each case.
- *Simplification of language* - Redraft provisions in simple, accessible and rational language, and avoid complex cross-referencing and indirect phrasing to ensure clarity in compliance and enforcement.
- *Removal of presumption of culpable mental state* Omit the presumption of culpable mental state to align with principles of natural justice and restore the burden of proof on the prosecution.

Our comments

The Paper's recommendations reflect the Government's forward-looking approach to reform tax compliance framework. Prioritising decriminalisation of procedural lapses and reserving criminal prosecution for deliberate or fraudulent conduct is a progressive step that will strengthen trust amongst taxpayers and improve ease of doing business.

[3] This is the new criminal code – replaced Indian Penal Code (IPC) in 2023

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