

DTC – need more analysis and debate

Global Think Tank undertakes detailed deliberations on the DTC

After a year of intense debate and deliberation, the direct tax code (DTC) has finally been tabled before the Indian Parliament. Once enacted, it will replace the existing income tax and wealth tax law in India and would be effective from April 1, 2012.

The Global Think Tank on Direct Taxes has been convened by Nishith Desai, Founder, Nishith Desai Associates. Nishith Desai Associates is a Mumbai based international legal and tax counseling firm with offices in Mumbai, Bangalore, Palo Alto, Singapore and Basel.

The internationally recognized personalities like Bharat Vasani, General Counsel- TATA Group, Keki Mistry, Chief Executive Officer- HDFC, Gautam Doshi, Group MD- Reliance ADAG, Nishith Desai, Founder- Nishith Desai Associates, Philip Baker, Gray's Inn, Fellow- University of London, David Sutherland, CFO- Morgan Stanley, are few who have accepted to be a part of the DTC Global Think Tank and share their views, insights, and recommendations.

Global taxation experts and members of a specially convened Global Think Tank have recommended a window of four months to further analyze and submit detailed recommendations on the Direct Tax Code Bill to the Government of India. A request for this extension has been made to the Parliamentary Standing Committee on Finance by Nishith Desai, Founder, Nishith Desai Associates and Convener of the Global Think Tank. The members of the Global Think Tank include renowned academicians, jurists, public policy experts and industry leaders from developed and developing countries, some of who have been actively involved in the tax enforcement and reform processes in their respective countries.

Lauding the exemplary initiative by the Hon'ble Finance Minister and the Parliamentary Standing Committee in inviting comments on the DTC Bill, Mr. Desai explained, "The DTC represents a significant policy opportunity for reforming the existing tax system and creating a robust and sustainable tax regime based on principles of equity, stability, increased compliance and economic certainty."

Considering that the DTC Discussion Paper, in its current form, does not provide any analysis of underlying economic theories, juristic or scholarly writings, revenue estimates, international legal practices or policy alternatives and the pros and cons thereof, Mr. Desai added, "In view of the far reaching impact of the DTC proposals on both inbound and outbound investments and business, it is necessary to undertake a thorough comparative analysis of legal developments and best practices from around the world. The Discussion Paper however does not provide such analysis making it difficult for taxpayers, professionals and other stakeholders to meaningfully assess the Code and make recommendations. The 20 day period provided for commenting on a massive piece of legislation such as the DTC Bill would therefore not suffice for this purpose."

Presenting the international perspective on India's proposed Direct Taxes Code, eminent academician and tax practitioner, Mr. David Rosenbloom, Professor, New York University, stated that "Some of the DTC proposals such as general anti-avoidance rules, treaty override, change in the threshold for tax residence, controlled foreign corporation regime, taxation of offshore share transfers, etc. have to be approached with due caution. In addition to the difficulties of developing appropriate rules for these complex subjects, attention must be devoted to the implementation of such rules and efficient means of both interpreting them and resolving the inevitable disputes they will spawn."

Traditionally, the task of assessing the direction and pace of tax reform has been entrusted to able Committees of experts that have presented reports based on in-depth research and analysis, allowing Parliament to identify appropriate fiscal policy to suit the country's interests. For example, the 1958 Law Commission Report which laid the foundation of the current income tax law was prepared by eminent jurists and draftsmen such as N.A. Palkhiwala, P. Satyanarayan Rao, G.N. Joshi and P.M. Bakshi. The DTC however, is not backed by such high level scrutiny or analysis. Further, the basic terms of reference for drafting the DTC and the Discussion Paper have not been made available to public.

The DTC Global Think Tank would be deliberating on several important constitutional and international law issues

including extra-territorial fiscal jurisdiction, treaty override and abuse of powers, and present their recommendations by May 2011.
