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DTC draft can lead to mistrust: panel

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Mumbai: India's ambitious tax reform effort has come in for flak from a panel of taxation and public policy experts, who say ambiguous provisions and errors in the draft Bill will only create an atmosphere of distrust and non-compliance.

Recommendations from the panel's 200-page report, titled *Direct Taxes Code-Global Think Tank* and presented to the parliamentary standing committee on finance chaired by Yashwant Sinha on 20 October, were made public on Wednesday.



Yashwant Sinha. Ramesh Pathania

Panel members included Nishith Desai, founder of law firm Nishith Desai and Associates; Keki Mistry, managing director of Housing Development Finance Corp. Ltd; T.P. Ostwal, vice-president, International Fiscal Association; and Bharat Vasani, general counsel, Tata group.

The DTC Bill, 2010, aims to broaden the tax base by removing exemptions, reducing ambiguities in the law, and curbing tax evasion. It also wants to plug

loopholes in existing laws concerning cross-border transactions. When passed, it will replace the Income-tax Act of 1961 and the Wealth Tax Act of 1957.

The panel's report says policy legislation such as DTC "should be referred to an independent law commission comprising expert lawyers, accountants, economists and legislative draftsmen" before it is rolled out. The members, it said, "noted that the absence of such experts in the internal committee that drafted the DTC has led to numerous legal, technical and policy-level issues in the DTC draft that would harm the interests of both revenue (department) and tax payers." There are "several elements in the government's approach to the DTC that are not conducive to a trust-based taxation regime," it said.

For instance, ambiguous and vague language used in general anti-avoidance rules (GAAR) will make it impossible for taxpayers to legitimately plan their affairs, it said. "The absence of sufficient checks and safeguards is a stimulus for corruption and abuse of power," the report stated. Under GAAR provisions, tax authorities can invalidate any arrangement entered into by a taxpayer with the objective of obtaining a tax benefit. "The whole focus of the Bill has been on the revenue side and there are no provisions for taxpayers' rights. We need to harmonise the taxation laws so that people can do global business," said Desai. In December, *Mint* reported the DTC was set to miss its roll-out date of 1 April since the parliamentary standing committee on finance had expressed its inability to submit its report on DTC in the winter session of Parliament.

DTC already faces resistance from several states. The panel's report said extra-territorial taxation envisaged under various DTC provisions "stand in contrast with global best practices and are also hit by constitutional limitations". It has recommended a system of tax consolidation to ensure tax neutrality and help Indian firms globalize.

The report has also identified policy considerations that have not been adequately considered. These include developing a sustainable fiscal policy, enhancing the country's participation in global trade, and increasing welfare of the average taxpayer.

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