

No clarity on capital gains tax in DTC Bill: Expert

Experts are not so gung-ho about the new Direct Tax Code (DTC) Bill that the Union Cabinet has approved yesterday and awaiting a parliament nod. The proposed tax reform will cut tax rates to bring in more people and companies under the net, phase out profit-linked exemptions for firms and replace them with investment-linked incentives.

In an interview to CNBC-TV18 Supreme Court Advocate HP Ranina said that the DTC has no clarity on capital gains tax. Expressing displeasure he said that benefit from income tax slabs cut is not too high. Raina also commented that minimum alternative tax (MAT) is more of a revenue bridging move.

Though not so happy on the DTC Bill, Nishith Desai Associates, Founder, Nishith Desai is awaiting for the fine print to be out on 30 August for a better understanding. However Desai is of the view that it is good to see MAT on book profits.

Here is the verbatim transcript of their interview with CNBC-TV18's Udayan Mukherjee and Mitali Mukherjee. Also watch the accompanying video.

Q: It appears now from what you have seen that securities transaction tax (STT) will stay and there is lot of long-term capital gains tax will also be nil as well, there should not be any change to it.

Ranina: I don't think that's clear from what the Finance Minister said yesterday. But if you look at the second draft of the DTC code, what they suggested was the capital gains, long-term will be taxable, but will be taxable at certain rates. So, the longer you hold the shares or mutual funds units, the less will be the capital gains. This is the structure, which they have given, in the new discussion paper. Now, we have to wait and watch on Monday, when the bill is introduced, whether the same provisions are incorporated in the final Bill, which is tabled in Parliament.

Q: On the personal income tax front, are you heartened by the lowering of slabs? Does that read as a positive?

Ranina: Well, the slabs have now been brought up, maximum 30% will now be applicable where it exceeds Rs 10 lakh. But don't forget that when the first draft was introduced after Mr Chidambaram had just left the Ministry, the 30% tax was applicable on income over Rs 25 lakh, that is now been brought down to Rs 10 lakh. So, in that sense, looking at it from that point of view, I think tax payers will be worse off. But of course compared to what they are today, where the highest rate is applicable on income over Rs 8 lakh and Rs 10 lakh, seems to be reasonably good.

Q: So you would say it doesn't necessarily mean increased disposable income because of this tweaking of slabs?

Ranina: Not much. It will vary from anywhere between Rs 5,000 to Rs 28,000 up to income of Rs 25 lakh. So, not much of a extra money left in the hands of the people.

Q: On the corporate tax front, do you take it as a relief that the rate might be capped at 30% now or the fact that a lot of the exemptions, concessions are probably going to go away, the effective tax rate might actually not be diminished very significantly?

Desai: That's true. I think that has been a trend for the last eight-ten years to reduce exemptions and keep the tax rates more stable. But I think much remains to be seen as to what's going to come up in the actual text. I don't get euphoric with little reduction on tax here and there, but more important thing is to always look at what is the language of the law. So, I think we are all waiting for the fine print to come out on Monday morning and then we will really get a picture as to what is given is good, bad or worst.

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Q: What about MAT or what did you make of what has come through so far? Would 20% rate be acceptable or do you think it's too high because earlier there was a lot of confusion about it being on the gross asset base, which worried a lot of companies?

Desai: I think that was a ridiculous idea to have a gross asset based MAT. No doubt it is much better now. But MAT is more relevant when you have too many tax exemptions. If you are going to take away tax exemptions then MAT relevance is reduced.

If tax rates are going to be by and large 30% or whatever then 20% tax, I don't know how much it will impact, it may not. It's not a great step forward, but at the same time proper rates will leave with that.

Q: What about the rate itself because the original proposal had worked with a lower MAT rate, I think closer to 25%?

Desai: In the earlier draft, MAT was based on the gross asset, if you put it this way. So, from that perspective, it's fine because you are going to have no tax exemption then 20% rate or 18%, I don't know how much difference it will make. But, in terms of psychology, I think any increase in the MAT would obviously have some effect, but I don't know how grave that would be.

Q: Even specific to the real estate play, you are waiting for more clarity on what exactly the stand is on special economic zones (SEZs).

Ranina: On SEZs, I think we need a lot of clarity because the question is whether a new unit set up in a SEZ will also qualify for the benefit of the exemption as present, whether developers will get it. I think we need to see the fine print of the draft bill because that is where there is a lot of grey area. As you are aware the Commerce Ministry has been pushing the Finance Ministry to make sure that the SEZ exemptions continue, so let's wait and watch whether they do that for the good of those who want to invest in SEZ.

Q: What's your view on the MAT front?

Ranina: On the MAT front, I think this is only a revenue earning measure as you know. They have brought down the main rate of corporate tax in the sense that the surcharge and the education cess have been removed, so it will be now 30% and to make up for the fall in revenues they have just jacked up the MAT rate from 18-20%. So, really it's just a revenue earning measure for the government. The companies will have to accept it. But don't forget MAT you get a credit, so ultimately it really doesn't mean much.

Q: What does it mean for foreign institutional investors (FIIs) from what you saw in the DTC? The treatment of capital gains as business income, which was proposed earlier, do you have more clarity on that?

Desai: Well, there is no clarity. I think they have said as I understand that capital gains regime will not change. So, if it remains the same as it is, I think there will be not much change in the reaction of FIIs, I believe, on this particular account.

Q: Did you feel confident from what you saw in this initial document that the 30% rate for corporates will include any further cess that maybe slapped because in the past it's been a particular rate plus education plus defense etc? Do you think the ceiling will remain 30%?

Ranina: My feeling is that the surcharge is going to be removed on corporate, the 10% surcharge. But the education cess of 3% will remain, that's my feeling. Therefore, I expect that the rate will come down from 33.99% to 30.9%. That's the difference that will make, about 3% difference.