

OPEN LETTER

TO: Hon'ble Finance Minister Smt. Sitharaman,

June 5, 2019

Ministry of Finance,

Room No. 134, North Block

New Delhi - 110 001.

CC: Hon'ble Prime Minister Shri Narendra Modi,

South Block, Secretariat Building Raisina Hill,

New Delhi

Re: Request to bring income tax amendments separately and not in the Budget.

Dear Hon'ble Finance Minister Smt. Sitharaman,

Congratulations on assuming ministerial charge of national finance.

I am a global tax lawyer, a researcher, author and a lecturer in practice for over 46 years. I am also one of the highest tax paying professionals in India. I hope you will have an ear for me.

I am aware that you are deep neck in the budget preparations at this moment. However, I have a small advice for you. I urge you not to make any changes to the Income Tax Act, 1961, barring minor procedural ones, without extensive public consultation and providing draft legislation in advance.

For the past four decades, I have seen, hurriedly drafted and introduced tax legislations create nightmare and havoc for the taxpayers and for the tax officials. There is no need for any secrecy in the matters of income tax bills. Income tax bill amending the Income Tax Act, 1961 should be

separately introduced and substantive changes should be made only on the basis of tangible information and tangible data points that are available.

In the US Fiscal policies are analysed on the basis of 10-year projections of the revenue impact of each proposal. The estimates are prepared by a team of senior economists, accountants and lawyers.

Our drafting has gone from bad to worse. In the matters of taxation, a small comma can also make huge difference. Other problem is that often the penalties and prosecutions are disproportionate to the offence or crime committed. Sometimes one feels a 'civil law' is converted in to a 'criminal law' without the philosophy of criminal law being adhered to.

We have also moved far beyond 'natural income tax law' to 'fictional income tax law' as so many fictions are incorporated into the tax laws that make it humanly impossible to comply or enforce them. Most laws are based on 'common sense' and therefore compliances are better and innocents are not unnecessarily mouse trapped.

Additionally, it needs to be borne in mind that every discretion conferred on a tax official must go through a special scrutiny and must be accompanied by some kind of guidelines.

Separately, I am also aware that the CBDT Task Force is working towards drafting a new Direct Tax Code which will simplify complex income tax laws with reduced rates, fewer exemptions and tax slabs and will be put up for public suggestions to address the concerns of all stakeholders. Please do not forget to include behavioural scientists and expert draftsmen in the process. Taxes have direct behavioural impact on the citizens and national character.

All these require appropriate philosophical landscape, debate and articulations. Hence, for the time being my advice to you is 'Please don't rush'.

Yours sincerely,

Nishith M Desai