Budget 2014: 'Shift To Accrual Based Budgeting'

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Will the first Modi Budget use tax policy to enhance ease of doing business in India, kickstart the investment cycle, generate revenue, boost savings & hasten reforms? 'The Firm' polled 19 experts and we asked them what will it take to kick-off 'Acche Din' for tax policy. Below are the responses of Nishith Desai, Founding Partner, Nishith Desai Associates:

Five critical issues that require the Finance Ministry's immediate attention.

The Union Budget should also reflect accrual based figures (and not just receipts). The receipts based presentation conceals major liabilities and projects a distorted view. For example, it is estimated that over USD 200 billion are held up in direct and indirect tax litigation. Assuming that generally around 30% of the disputed amount is collected before the taxpayer goes in appeal, it seems that around USD 60 billion is collected.

It is also estimated that the Revenue loses around 80% of the appeals and hence would have to refund at least USD 50 billion along with interest. These refunds bear 6% interest (which itself is unfair as taxpayers losing the case have to pay 12% non-tax deductible interest). By the time these amounts are refunded it takes about 7 years after which the USD 50 billion outstanding refund may increase (along with interest) to around 100 billion. These refunds are statutorily guaranteed and therefore could be construed as sovereign bonds. This hidden liability is neither reflected in the Budget nor is any reference made in the Budget speech. We should move to accrual base Budget otherwise it would tantamount to misrepresentation of true and fair view of the state of the Indian economy.

Retrospective amendments (especially amendment of section 9) must be immediately witdrawn. There have been over 200 retrospective amendments in income tax laws in the recent past. How can a tax payer decide his behavior? Retrospective amendments continue to erode global investor confidence in India. In fact around 11 countries have banned retrospective taxation.

All extra-territorial taxation should be withdrawn. Several such provisions have been introduced including taxation of overseas M&A or services. It is not appropriate to encroach upon another country's sovereign right to tax.

Extra-territorial taxation gives rise to double taxation of the same income. Foreign countries do not grant tax credits for the extraterritorial taxes collected by India and this seriously impedes India's potential to attract foreign investment just like the retrospective amendments. Income tax as a principle should be charged on what is ordinarily considered income and ordinarily sourced income in India devoid of all artificialities. Only then it will be acceptable to taxpayers and receive natural compliance.

Abandon the Direct Taxes Code project. It was poorly conceived and originated without any review by independent judges, jurists, lawyers, accountants, business leaders etc. Since DTC was originally poorly conceived and drafted it has become a patchwork exercise without any direction.

The Government should appoint an independent Law Commission to develop a new tax code after a thorough review of the existing law and international best practices. The Law Commission must comprise Judges, lawyers, accountants, business leaders, statisticians, behavioral and social scientists as well as legislative draftsmen.

It is necessary to provide statutory recognition to key internationally accepted taxpayer rights including:

Currently these rights may be softly spoken by the Government but totally disobeyed in practice. Hence they must have statutory force.

It is important that the above issues are addressed by the new Government at the earliest. It will go a long way in reassuring investors.