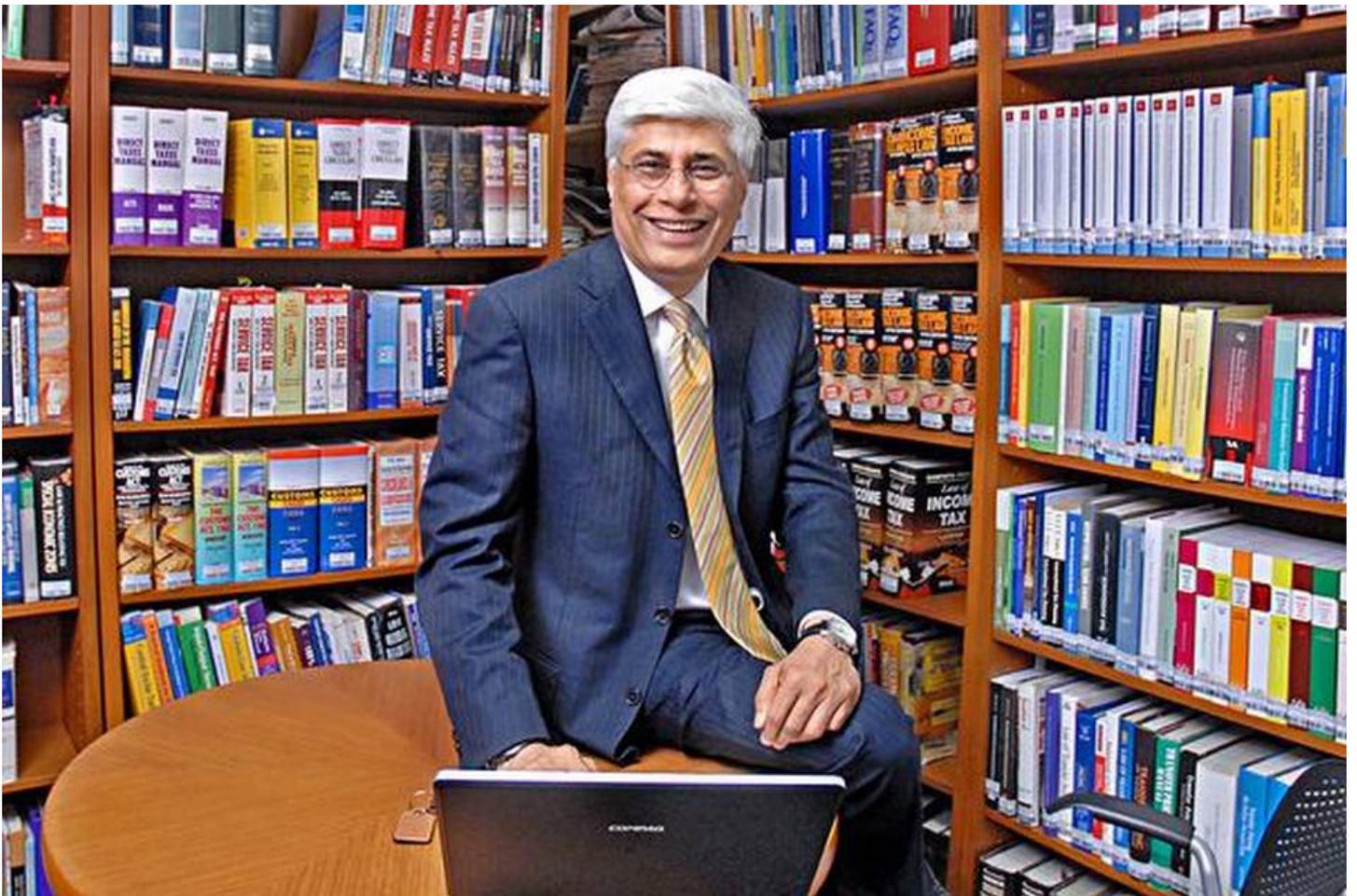


MUMBAI

Dear Ms. FM, please divorce tax tweaks from the Union Budget



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Ace Mumbai taxation lawyer and one of India's highest taxpaying professionals, Nishith M. Desai, on why direct tax changes in every Budget make little sense and add to taxpayers' woes, in a communiqué to Nirmala Sitharaman ahead of her maiden 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 taxpaying professionals in India. I hope you will have an ear for me.

I am aware that you are neck deep 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 a 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 U.S., 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.

Meanwhile, our drafting has gone from bad to worse. In the matters of taxation, a small comma can also make huge difference. Another problem is that often the penalties and prosecutions are disproportionate to the offence or crime committed. Sometimes, one feels a 'civil law' is converted into 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 a Central Board of Direct Taxes 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