Industry renews its demand for overhaul of taxes on capital gains

PRIYANSH VERMA
New Delhi, November 28

WITH THE INTERIM Budget to be presented in February, industry bodies and tax experts are learnt to have approached the government for a thorough review of the capital gains tax structure.

According to sources, the government has received proposals from industry to simplify the tax structure and bring parity among tax rates and holding periods for different asset classes.

The move follows top government functionaries saying in public on many occasions that the tax structure for capital gains needs to be simplified, with a view to reducing arbitrage among asset classes.

"The government aims to align the tax rates and holding periods for equity, debt, and immovable property investments," a source said. To simplify the structure, experts say the government should bring in uniformity in tax rates and consistency in the classification of assets as long term or short-term, based on the period of their holding.

Currently the issues plaguing the capital gains tax structure broadly are: non-uniformity of tax rates; different tax rates for different assets; and lack of indexation benefit for certain assets, such bonds as debentures (see chart).

Long-term capital gains on the transfer of listed shares are currently taxed at 10%, while short-term gains attract a rate of 15%. And gains from the sale of real-estate properties are taxed differently as compared to the gains from the sale of shares.

Further, as Akash Kalra, expert in transfer pricing and international economics, says, "The capital gains tax structure in India offers various exemptions and deductions, such as exemptions for investments in specified assets or rollover provisions for reinvestment of capital gains. However, these exemptions and deductions are complex and vary depending on the type of asset and holding period, leading to confusion and potential misuse."

Kalra also notes that the current capital gains tax structure in India requires taxpayers to comply with various documentation requirements, which includes reporting gains accurately, maintaining records of transactions, and complying with the tax deducted at source provisions. "The complexity of these requirements poses challenges for taxpayers and increases the risk of non-compliance."

Ajit Krishnan, partner – international tax and transaction services, EY, suggests that the government could do away with the sub-classification of assets, and categorise them into two components: financial and non-financial instruments.

"The moment you hold a financial asset, which is in your demat account or bank account, then it should be treated at par, without differentiating between equity, debt or various kinds of assets. The holding period for all financial assets should be 12 months, and should attract the same tax rate under the long term capital gains rate."

Krishnan also feels that the difference in tax rates for residents and non-residents should be removed. Currently, the tax rate for residents for unlisted shares and bonds stands at 20%, while that for non-residents at 10%.

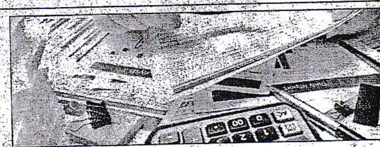
Deloitte India partner Rohinton Sidhwa says the government has received suggestions regarding creating rates for three categories: equity, non-equity financial assets, and all others including property.

That said, some experts say the interim Budget may not include changes in capital gains structure, and these may have to wait for the full Budget to be presented by the new government after the polls.

"Considering this year's Budget will be having limited changes due to the election year, it is unlikely that any changes will be expected on the capital gain taxation part. But, one may expect this to be done when the newly elected government comes up with its maiden Budget post-election," says Saurrav Sood, practice leader – international tax and transfer pricing at SW India.

TAX STRUCTURE

Holding period for long-term tag — Asset type	(months)
Listed Shares	12
Equity oriented MFs	12
Unlisted shares	24
Immovable assets (like real estate)	24
Moveable property (like gold)	36
Debt oriented MFs	36
Listed Units of REIT/InvIT	36



TAX RATES

Long-term	
(Except on sale of listed equity shares/units of equity-oriented fund)	20%
On sale of equity shares/units of equity-oriented fund (on gains above ₹1 lakh)	10%
Short-term	
Without STT	I-T slab rate
With STT	15%

Indexation benefit is not available:

- Long-term capital gains arising from transfer of an equity share, or a unit of an equity oriented fund or a unit of a business trust
- Bonds or debentures (except capital indexed bondst and Sovereign Gold Bond)
- In case of non-residents, capital gains arising from transfer of unlisted shares (taxable at concessional rate of 10%)

Tax rates for residents and non-residents

Nature of asset	Nature of capital gain	Tax rate for residents	Tax rate for non-residents
Unlisted shares	Long term	20%	10%
REIT/InvIT units - unlisted	Long term	20%	10%
Unlisted bonds/debentures	Long term	20%	10%

Non-residents also have the advantage of availing treaty benefit