

# Revised DTC rings in good tidings for stock investors

## Keeps Long-Term Capitals Gains Tax From Shares At Nil, Relaxes Short-Term Capital Gains Tax

Our Bureau  
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**T**HE decision to keep long-term capital gains tax on share investments unchanged at 0% and relaxations in short-term capital gains tax will encourage investors to deploy part of their savings in equities, tax consultants said.

According to the revised direct taxes code, 50% of the short-term capital gains will be exempt from tax, while the remaining 50% will be taxed at the income tax rate applicable to the investor. So the effective tax rate on short-term capital gains would be 5%, 10% and 15%, depending on which the tax bracket the investors falls in. This move would be more beneficial to small investors who fall in the lowest tax bracket.

"It is a better scheme as it encourages people in the lower income bracket to invest in shares and mutual funds. The DTC bill is more equitable and fair," said Sudhir Kapadia, partner, tax, at consulting firm Ernst & Young.

The earlier draft had sought to tax long-term capital gains, which had caused unease among investors. In addition, the draft had also recommended subjecting foreign institutional investors to long-term capital gains tax, which, many felt, would have impacted capital flows into the country.

While FIIs have been spared of long-term capital tax gains, there are other hurdles, especially for portfolio investors coming from countries with which India has signed double taxation avoidance treaties.

"Any claim for a tax treaty benefit will now be subject to the rigour of the general anti-avoidance rule," says Abhisek Goenka, partner, BMR Advisors.

The rule has been put in place to avoid what is known in market parlance as 'treaty shopping', whereby investors in other jurisdictions route their money through tax havens to take advantage of the double taxation avoidance treaties.

"To an extent, some of these conditions may not be very effective safeguards. Investors who come in from tax havens like Mauritius will now be at the mercy of the tax official in India," says N C Hegde, partner, Deloitte Haskins & Sells.

And there are some other clauses which have implications across investor classes. For instance, long-term gains such as in the case of a buyback or open offer the concessional rate of 20% will no longer apply and tax will have to be paid as per the applicable rates.

"There is also uncertainty on how income of FIIs from derivative transactions, which are of short-term nature, will be charged," said Shefali Goradia, partner, BMR Advisors.

### FOREIGN FUNDS

**FIIs have been spared of long-term capital tax gains but investors coming in from tax havens will now be at the mercy of the tax official in India**

### NEW REGIME

	Income-tax Act, 1961	DTC - Initial proposals	DTC - Revised proposals
<b>a Minimum Alternative Tax (MAT)</b>	18% of book profit, not on SEZs and credit available for 10 years	MAT on gross value of the sets at 2% on all companies (for banking companies 0.25%), no relaxation for SEZs and no MAT credit	20% on book profits SEZ units and developers to pay MAT MAT credit for 15 years
<b>b SEZ units</b>	Profits are not subject to tax	No tax holiday to existing as well as new SEZ units	Existing SEZ units starting operations before March 31, 2014 shall be eligible to claim profit-based tax holiday
<b>c SEZ developers</b>	Profits are not subject to tax	Investment-based tax holiday	Existing developers engaged in operations before April 01, 2012 shall be eligible to claim profit-based tax holiday
<b>d Tax losses</b>	To be carried forward for maximum 8 years	Unlimited carry forward of losses	Unlimited carry forward of losses
<b>R&amp;D expenses</b>	In-house - Weighted deduction of 150%	In-house - weighted deduction of 150%	In-house - weighted deduction of 200%
<b>INTERNATIONAL TAXATION</b>			
<b>a General Anti Avoidance Rules (GAAR)</b>	No such provisions	Empower tax authorities to declare an arrangement impermissible under certain conditions	GAAR to continue with some safeguards
<b>b Treaty Override</b>	Treaty or the Act, whichever is more beneficial, to prevail	Treaty or DTC - Later in time to prevail	Treaty or the Act, whichever is more beneficial, is to prevail subject to some caveats
<b>c Branch Profit Tax</b>	No such provisions	Every foreign company shall be additionally liable to pay branch profits tax @ 15%	Additional Branch profit tax @ 15% on all foreign companies having any form of PE in India
<b>d Foreign Companies - Residential status</b>	Resident in India only if controlled and managed wholly in India	Rules broadened - Resident in India where even a part management lies in India	Rules relaxed - Focus shift to place of effective management
<b>e Indirect transfer of capital asset</b>	No specific provisions	Income from indirect transfer of capital asset (situated in India) specifically covered	Provision retained with relaxation - transfer of share of a foreign company taxable in India; if FMV of assets in India exceeds 50% of FMV of total assets