Dividend deduction curb in tax bill

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New Delhi: Income Tax Bill, 2025, has proposed a tougher dividend regime on companies opting for a corporate tax rate of 22 per cent.

Dividends received by these companies from other companies will be taxed both on their accounts and on the hands of shareholders when passed on to the shareholders, creating a situation of double taxation.

Income Tax Act of 1961 did not tax such dividends on the accounts of companies.

Section 80M of the tax law allowed Indian companies to deduct dividends received from domestic or foreign firms and business trusts when redistributing them to shareholders.

Introduced by the Finance Act 2020, this provision prevented double taxation and avoided cascading tax burdens in multi-tier corporate structures.

Under the Finance Act 2020, dividends received from a domestic company before April 1, 2020, are exempt from tax.

After that date, inter-corporate dividends can still be claimed as a deduction if redistributed to shareholders.

For example, if Company A receives ₹100 in dividends from Company B and subsequently distributes it, the amount is not taxable at the corporate level, ensuring taxation occurs only at the shareholder level.

Section 80M applies to all domestic companies, regardless of their tax regime, allowing them to deduct the amount of dividends they distribute before the filing deadline. The shift from Dividend Distribution Tax (DDT) to shareholder taxation was enabled by improved tracking technology, broadening eligibility beyond holding-subsidiary relationships.

The 2025 Bill removes this deduction for companies opting for the 22 per cent tax rate, leading to potential double taxation—once at the corporate level and again at the shareholder level.

However, firms under the concessional 15 per cent tax rate can still benefit from the provision.

Rahul Jain of Khaitan & Co. said, "Under current law, an Indian company is not taxed on dividends received from another Indian or foreign company if those dividends are redistributed within a prescribed timeframe. The new bill maintains this rule except for firms under the concessional 22 per cent tax regime. Given the government's assurance of no new taxes, this exclusion appears inadvertent and needs urgent clarification."

Mehul Bheda of Dhruva Advisors highlighted concerns, stating, "The current exemption for inter-corporate dividends in the 22 per cent tax regime appears missing in the new bill. If this stands, many corporations that moved to the 22 per cent rate will face double taxation, necessitating urgent restructuring. It is unclear if this change is intentional or an oversight."

Tax expert Narayan Jain noted that Section 148 of the new bill retains the inter-corporate dividend deduction but modifies the timeline, requiring companies to distribute dividends at least one month before the filing deadline to qualify.

Sanjay Basu of AQUILAW pointed out that, like Section 80M, Clause 148 allows deductions only up to the amount of dividends received or distributed, whichever is lower.

Sandeep Jhunjhunwala of Nangia Andersen LLP observed a discrepancy: while companies under Clause 200 (22 per cent tax rate) lose the exemption, manufacturing firms under Clause 201 retain it. "This inconsistency suggests a possible oversight that may be addressed in later amendments," he said.

DENIED TO FIRMS PAYING 22%TAX

- Dividend distribution tax on companies stopped in 2020. Dividend gets taxed in the hands of shareholders
- In the case of dividends received from another company and passed on to shareholders, the sum was not taxed on the accounts of companies. Shareholders taxed
- New bill has removed this exemption on companies that have opted for 22% tax. The dividend will be taxed both on company accounts and on shareholder hands, creating a situation of double taxation
- Not applicable to companies paying 15% corporate tax

Refund rider in tax bill

OUR BUREAU

PAYOUT IF RETURN FILED ON TIME

- Clause 263(1)(a)(ix) of bill says returns must be filed on time to claim refund under Chapter XX
- Clause 263(4) prescribes way to file returns if due date is missed, within 9 months of end of tax year
- Joint reading of both the clauses creates ambiguity on refunds if deadline is missed
- Clause 433 under Chapter XX says refund claims must be made by furnishing a return as per Clause 263
- Section 139 of the present income tax act does not have such a provision

Calcutta/Delhi: The new income tax bill has proposed that taxpayers will be eligible for a refund only if they file the original return on time.

While filing a belated return is permitted there is a lack of clarity on whether the assessee will be able to claim a refund prompting tax experts to call for a correction of the anomaly before the bill is passed.

Clause 263(1)(a)(ix) of Income Tax Bill, 2025, which was tabled in Parliament on Thursday, stipulates that a person seeking a refund under Chapter XX must file their return of income within the prescribed due date.

Additionally, Clause 263(4) of the bill provides a mechanism for those who fail to meet this deadline, allowing them to file their return within nine months from the end of the tax year.

"A joint reading of both these clauses raises a critical ambiguity, whether a refund would still be granted if the return is filed belatedly beyond the original due date," said Sandeep Jhunjhunwala, tax partner at Nangia Andersen LLP.

On top of that Clause 433 of Chapter XX, states that every claim for a refund shall be made by furnishing a return as per Clause 263.

"While the overarching intent of the bill is to ensure simplicity, certain provisions, upon closer examination, currently appear to have interpretational ambiguities, which may get ironed out in the subsequent phases of passage of the bill," Jhunjhunwala said.

Tax advocate Narayan Jain said that the current section 139 of The Income Tax Act, 1961 does not prescribe any such provision. He suggested a review of the "harsh and unjust" provision and allow refund even in the case of furnishing belated returns.

"If an individual fails to file its return within the due date, he will be deprived of his rightful claim of credit for taxes paid by way of TDS, advance tax or self-assessment tax.

"This change is against the principles of natural justice and leads to unjust enrichment of the exchequer, as there is no reason to deny a genuine refund claim on the grounds of a procedural lapse. Hence, the government needs to relook at the proposed change," said Riaz Thingna, partner-tax, Grant Thornton Bharat.

"The new income tax code introduces a significant requirement under Section 263(1)(ix), mandating that taxpayers file their income tax returns by the prescribed due date to be eligible for refunds.

"However, Section 433, which governs refunds, does not reference this due date. This creates a potential inconsistency, hence clarity in this regard would need to be watched out," said Vinita Krishnan of Khaitan & Co.

"This is an anomaly and needs to be clarified, else genuine cases where returns are filed even a few days late, the refunds could be impacted," said Mehul Bheda, partner, Dhruva Advisors.

"This is completely a new provision and is similar to a few other provisions such as allowability and carry forward of losses," said Punit Shah, partner, Dhruva Advisors.

Missed opportunity on some fronts, say experts

Shishir Sinha
New Delhi

The new Income Tax Bill disappoints on inclusion of provisions on group taxation and removal of TDS.

Group taxation means consideration of a corporate group as a single economic unit for tax purposes. It allows for offset of profits and losses within the group. This provision complements financial consolidation of group companies that now exists in countries such as Australia, Belgium, Denmark, France, Germany, Italy, New Zealand, Spain, the UK and the US. It avoids the use of separate legal entities without economic substance for tax avoidance purposes.

According to Bombay Chartered Accountant Journal, the idea of group taxation is to reduce the burden on the holding company as it may be required to inject funds into a loss-making company without any reduction in corporate tax. Also, the holding company shall receive a return on its investment only when the subsidiary becomes profitable.

According to Sandeep Jhunjhunwala, M&A Partner with Nangia Anderson LLP, it was said that the committee (set up to recommend changes in the Income Tax Act) will consider global-best tax practices and ensure their implementation in India. "Many countries like the UK and the European region follow a concept of group taxation which makes things much simpler from a filing perspective as well as from overall tax administration perspective. We could have done by imbibing some of these contemporaneous provisions which are required at this point in time," he said.

OTHER EXPECTATIONS

Apart from group taxation, there are other issues that needed consideration. CA Anand Bathiya, President, BCAS (Bombay Chartered Accountants' Society), said: "On *prima facie* reading, the Bill seems to be a bunch-up and clean-up, 'old wine in new bottle' exercise. The form gets simpler with no major changes to affect the substance. Being an attempt to revamp after 65 years, the expectation was of a contemporary novel code including newer concepts such as group taxation, carry-back of losses, etc. But it seems the wait will be longer."

Another expectation was cleaning up the complex TDS web. According to Shalini Mathur, Director - Tax and Economic Policy Group with EY India, one area which the industry hoped the Income Tax Bill to cover was TDS rate structure. Currently, there are 32 sections dealing with 37 types of payments to residents, where the TDS rates vary from 0.1 per cent to 30 per cent. In some sections, there are varying rates of TDS depending upon status of payees or nature of payments. "The wide variety of TDS rates creates confusion, increases compliance burden and gives rise to characterisation disputes."

Another area is the concessional tax regime under personal income tax. "The Bill could have considered retaining only the concessional tax regime, with transitional provisions to facilitate a smooth shift for taxpayers. This might have helped in further streamlining the system and reduce complexity," she said.

GLARING MISSES

- Inclusion of group taxation provisions
- Cleaning up the complex TDS web
- Concessional tax regime under personal income tax

Firms get more time for share format conversion

MANU KAUSHIK
New Delhi, February 12

THE MINISTRY OF corporate affairs (MCA) has given an extension for private companies to convert their physical shares into electronic form by June 2025. The extension has come as two depositories NSDL (National Securities Depository Limited) and CDSL (Central Depository Services Limited) have a huge backlog of applications from companies to deal with.

Experts said that many of the private companies have applied for dematerialisation which was notified by the MCA in August 2023. "The enforcement of the notification witnessed a slew of applications for dematerialisation with depositories which increased their task. With almost 1.7 million active private companies in India, the implementation ask on effective date being September 30, 2024, was not commensurate with the magnitude of applications requiring the depositories' attention," said Sandeep Jhunjhunwala, M&A tax partner at Nangia Andersen LLP.

MCA amended the companies (prospectus and allotment of securities) rules, 2014 to introduce Rule 9B which mandated private firms—barring small (with a turnover below ₹40 crore and a paid-up capital below ₹4 crore) and government firms—to dematerialise their shares in about a year.

"The extension clears the shadow of non-compliance cast on private companies who are still waiting in queue for their applications to be cleared by the depositories. The blanket extension appears to ringfence even those companies who had not filed an application seeking dematerialisation. Such companies seem to have been given an extended window to now file for dematerialisation and still be compliant with the law," said a corporate lawyer.

Experts said dematerialisation can benefit all stakeholders, including companies, investees and regulators.

For instance, in the case of companies, having demat shares removes the risks associated with physical share certificates, such as loss, theft, mutilation and forgery. It also strengthens the credibility of securities when offered as collateral, and leads to swift investment exits for shareholders.

In the case of regulators, it helps keep a watch on benami share transactions, conduit or shell firms in addition to minimising the cases of duplication of securities.