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Interim Budget: If FM breaks conventions

There are no constitutional or legal barriers preventing the finance minister from proposing changes in tax laws, say experts

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On February 1, when interim Finance Minister Piyush Goyal stands up to present the Interim Budget in the Lok Sabha, he may enter a grey zone in constitutional law if he were to propose large-scale changes in tax laws.

Though there is no law under the Constitution preventing him from doing so, there is none backing the government's move either, if they decide to bring in statutory changes in tax laws, say constitutional experts and lawyers.

"There is no legal barrier or constitutional prohibition which prevents the government from proposing changes in direct tax codes when it presents the Budget during an election year. The government is well within its rights to do so. And, it only proposes the Budget. It is actually enacted by Parliament," notes Shubhankar Dam, professor of public law and governance at the University of Portsmouth School of Law.

The question of whether the government would propose changes to the direct tax code has assumed importance in the wake of a statement made by Finance Minister Arun Jaitley. Speaking to a television channel on January 17, Jaitley had said that though the interim Budget will be within the existing conventions, its contents would be dictated by economic compulsions and realities of the day. With Jaitley now advised rest, the onus to present the Budget proposals has fallen on Goyal.

Going by conventions, most governments in the past have refrained from proposing major changes in the Income-Tax Act in the interim Budget. While several governments have tinkered with indirect taxes, most finance ministers have kept income tax rates unchanged in the interim Budget.

Experts point out that it does not make sense to announce policies that will continue only for the next two-three months. "It is best to give the incoming government a clean slate to make fresh policy," says Dam.

Lack of time in an election year is a reason why the government of the day does not go with a full budget and instead proposes the interim Budget, points out P D T Acharya, a constitutional expert and former secretary general of the Lok Sabha Secretariat.

TAX PROPOSALS BEYOND THE USUAL

1962-63

FINANCE MINISTER: Morarji Desai

- The Finance Bill proposed the discontinuance of the duty on salt for the year

- The Bill proposed the continuance of certain commitments under the General Agreement on Tariffs and Trade

1977-78

FINANCE MINISTER: H M Patel

- The Bill proposed to enable companies to make deposits with the Industrial Development Bank of India in lieu of payment of surcharge on income tax

- The Bill proposed the discontinuance of the duty on salt for the year

1980-81

FINANCE MINISTER: R Venkataram

- The Bill proposed income tax exemption for residents of Ladakh; those assesseees engaged in poverty alleviation; corporations or other bodies promoting the interests of the SCs/STs

- The Bill proposed to levy auxiliary duties of customs on all imported goods

2004-05

FINANCE MINISTER: Jaswant Singh

- The Bill proposed levy of National Calamity Contingent duty on certain items

- Amendments were proposed in baggage rules

2014-15

FINANCE MINISTER: P Chidambaram

- Proposed changes in customs duty structure on non-edible grade industrial oils, fatty acids and fatty alcohols

- Exemption from countervailing duty on specified imported road construction machinery withdrawn

- Concessional customs duty on imported capital goods to encourage domestic production of security paper for printing currency notes

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"If one reads only Article 112, any government can bring a Budget for the financial year at any time. However, if you read Article 112 with Article 83, it makes things clearer," notes Acharya. Article 112 gives the government the power to present annual financial statement, known as Budget, charged to the Consolidated Fund of India. It is in this statement that the government proposes the policy decisions that it wishes to take in the upcoming financial year. Article 83 of the Constitution, meanwhile, states that unless there is a state of emergency in the country, the term of the Lok Sabha has to mandatorily end on the completion of five years.

"So, at the end of the term, if there is no government, a full year budget does not make sense," says Acharya. Even if the government decides to break the conventions, experts do not expect major or sweeping changes to the tax laws in the forthcoming interim Budget. The changes could be more along the lines of clarifications

and some minor reliefs for assesseees, they add.

"Going by the convention, no wholesale tax policy proposals on the revenue side are expected," says Sandeep Chilana, partner at Shardul Amarchand Mangaldas & Co. The Election Commission, too, cannot do much if the government goes ahead with proposing changes in tax laws, say experts.

As Dam points out, the Election Commission does not have any authority to direct Parliament to do something or not do it. Even when the Model of Conduct is in place, the Election Commission could only direct the government. "But as a matter of law, the Commission cannot really force the government to obey," adds Dam. Acharya points out that the only person who can raise objections to any such changes is the President since it is with his or her approval that the Budget proposals, interim or otherwise, will be passed to become a law.