Publication: The Economic Times Mumbai;Date: Feb 8, 2013;Section: Economy;Page: 19

e-paper The Times on a Click

Govt Hopes to Raise 1 lakh cr by Taxing Cross-border Deals

The Directorate of Transfer Pricing expects to collect an extra . 44,000 cr this fiscal

M PADMAKSHAN MUMBAI

The government hopes to raise . 1 lakh crore, about one-sixth of its total direct tax collection target, by taxing cross-border deals. The Directorate of Transfer Pricing, a wing of the income-tax department, had raised . 66,000 crore last financial year and expects to collect an additional . 44,000 crore this fiscal. The projected direct tax collection for the current year is . 5.8 lakh crore.

Transfer pricing (TP) rules were put in place in 2001 with a view to check revenue loss from cross-border transaction between related parties and associate enterprises (AE) as such entities are often used to conceal the real value of a transaction and shift the profit to either tax havens or jurisdictions with lower tax. The department has taken into account elements like “marketing intangibles” — expenditure incurred for building brand equity in India for products sold by MNCs. Since expenses incurred by the Indian arm of an MNC is presumed to have enhanced the brand equity of the product in India, a part of such expense is deemed to have been paid by the parent company to the Indian arm. Thus, tax is levied on that part of the income that is deemed to have been paid; here, it is immaterial whether payment has been actually made to the Indian arm or not.

The TP authorities in India have been levying tax on marketing intangibles for the past two years amid stiff opposition from MNCs and tax professionals. But the directorate was emboldened when a Special Bench of Delhi Income-Tax Appellate Tribunal (ITAT) recently ruled in favour of levying tax on such marketing intangibles. The ruling was in the case of LG Electronics India.

This year, TP authorities are exploring an unchartered area — locational savings. For instance, the cost of operation of an MNC branch in India is compared with the cost of operation in other locations and a part of the difference is deemed to have been paid to the Indian branch. “Most additions by the Indian TP regime are being made on MNCs in businesses like pharma, banking and software,” said a tax official. Banks are being also asked to pay tax on services they undertake on behalf of the headquarters. “India and China have expressed their views on taxation of locational savings, locational advantage, locational rent and market premium in the United Nations Transfer Pricing Manual. The idea expressed by India and China is being taken note of seriously by the global TP regime,” TP Ostwal, senior chartered accountant and member of the UN Transfer Pricing sub committee told ET.

“The concept of economic ownership is an integral part of the subject of transfer pricing and the same cannot be ignored while dealing such issues,” said M Lakshminarayanan, managing partner (tax), Deloitte India.

According to Vispi T Patel of Vispi T Patel & Associates, the adjustments made by the revenue officials on account of transfer pricing, for locational savings, intra-group services, share valuation, etc., may not necessarily be in sync with the transfer pricing regulations, as they may not emanate from the economic substance of the transactions. One needs to weigh the philosophy of the regulations and whether the adjustments are in line with it, he said.

Kitty Swells

• Transfer pricing was put in place in 2001 with a view to check revenue loss from cross-border deals

• The department has taken into account elements like “marketing intangibles” — expenditure incurred for building brand equity in India

• TP authorities in India have been levying tax on marketing intangibles for the past 2 years amid stiff opposition from MNCs and tax pros