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I-T dept raises 11,000cr tax demand on Vodafone

TOUGH CALL: CASE TO SET PRECEDENT FOR M&As Supreme Court to take final call on dispute; ruling to influence pricing & structure of all future cross-border deals

Our Bureau MUMBAI

THE battle between tax authorities and telecom major Vodafone is nearing its climax. The income tax (I-T)department on Friday raised a demand of over 11,000 crore on Vodafone International Holdings BV, on account of its $11-billion deal to acquire Indian telecom firm Hutchison Essar in 2007.

Vodafone has 30 days to comply with the demand. Whether Vodafone will have to eventually cough up the tax will be decided by the Supreme Court after it resumes hearing on the case on October 25. The final outcome of the tax dispute will influence the pricing and structure of all future cross-border M&A deals.

Strongly disagreeing with the tax calculation, Vodafone said, “In this ‘test case’, the tax authority is attempting to interpret Indian law as it has never been interpreted for the past 50 years, and this interpretation also goes against internationally recognised tax norms.”

“Vodafone,” said a company release, “continues to believe that it is not liable for any tax on this transaction involving the transfer of a company outside of India.”

The I-T demand follows the apex court’s direction last month to quantify the tax demand on Vodafone. The Supreme Court gave its order while hearing Vodafone’s appeal against the Bombay High Court ruling that upheld the I-T department’s position that it has jurisdiction to tax the cross-border acquisition.

“We are waiting to see whether the Supreme Court will acknowledge the substance of the transaction or the law binding to these transactions,” said Vispi T Patel of chartered accountancy firm Vispi T Patel & Associates.

The tax department claims it has the jurisdiction on the M&A deal because the company and the business that was sold was based in India, even though the transaction happened offshore between two nonresidents. The high court had turned down Vodafone’s argument that no tax was payable locally as the transaction had no “territorial nexus” with India.

The tax demand was made on Vodafone, the buyer, instead of Hong Kong-based Hutchison International that sold the shares of Hutch Essar to Vodafone. **‘Vodafone informed in advance’**

ACCORDING to the income-tax department, since Vodafone did not deduct tax while making payment to Hutchison, the liability to pay the tax falls on Vodafone. The I-T department also claimed that Vodafone was informed in advance about the tax liability arising in India on account of its acquisition of Hutch Essar, even while the government was processing its foreign investment application.

Consequently, the I-T department issued the order treating Vodafone as an assessee in default. A press release issued by the department on Friday said, "The income-tax department today issued an order raising a tax demand of 11,217.95 crore on Vodafone International BV, treating it as an assessee in default under Section 201 (I) of the Income-Tax Act, 1961, for failure to deduct tax as required under Section 195 of the Act before making a payment of $11,076 million to Hutchison Telecommunications International."

"This is a very good order passed by the income-tax department. All aspects of the transaction were taken into consideration before making the order," said Girish Dave, counsel for the income-tax department.

But Vodafone feels since it was the acquirer, it has made no gain on the transaction. The company also believes the tax calculation does not follow the conclusions of the recent Bombay High Court judgement. "Vodafone will continue to take whatever actions are necessary to defend itself in this matter," said the company.