

International Tax News: News Archive
2017
January
01/23/2017
News

India**Indian Government Reopens Door for Foreign Investments**

By Siri Bulusu

India's Central Board of Direct Taxation has suspended a notice for taxation of India-focused funds after industry professionals criticized the government for widening the tax net on foreign investments.

Using a list of 19 different investment scenarios, the Dec. 21 circular intended to specify the types of foreign investment instruments that would be taxable under a 2012 amendment to India's Income Tax Act of 1961, but it instead drew widespread criticism for opening "Pandora's box" due to its all-encompassing nature.

The 2012 amendment was precipitated by a tax dispute between the Indian government and Vodafone Group. The Indian government argued that a massive transfer of Indian assets from India-based telecommunications company Hutchinson Essar Ltd. to Vodafone Group through a Cayman Islands-based subsidiary should have come under India's tax jurisdiction, since the purpose of the transaction was to transfer Indian assets.

"The industry felt the clarification opened up various debatable issues because it dealt with the foreign investors operating outside India," Mumbai-based chartered accountant Vispi T. Patel told Bloomberg BNA in an e-mail Jan. 19 referring to the December circular.

Industry members commented to the Indian government, stating that the legally-binding circular was a punishing measure for those who have made investments into India. Under the various investment scenarios, a fund could technically be taxed multiple times "with no end in sight."

Patel said by suspending the circular, the government is keeping the matter of foreign investments open for the time being. There are genuine issues the government wants to deliberate before distributing another clarification, he added.

Only the Central Board of Direct Taxation can clarify how the government will actually administer the law, Patel said. "The circular is suspended, but the law is still there on the statute."

Vodafone Tax Dispute

In the Vodafone tax dispute with India's government, the global telecoms company challenged the tax authority's demand and the Supreme Court ruled in favor of the company, since at the time India had no legal provision to tax such a transaction.

India then added an amendment—with retrospective applicability up to seven years—to include such offshore transactions and revisit the dispute with Vodafone Group. The new law was written broadly and ended up netting most other foreign portfolio investments.

Until the clarification was issued in December, however, tax officers were mostly lenient on most foreign portfolio investments and foreign indirect investments, keeping with the spirit of the 2012 amendment to crack down on tax evasion.

"There was a disconnect between the industry and the circular," Patel said. "The government felt it is better to look into each matter the industry has brought forward to understand what they want."

Changes to India's taxation of foreign portfolio investments may be announced in upcoming union budget speech, scheduled for Feb. 1.

Snapshot

- 2012 amendment to Income Tax Act may be applied retrospectively up to seven years
- Changes to tax on foreign portfolio investments may be announced in Feb. 1 budget

To contact the reporter on this story: Siri Bulusu in New Delhi at correspondents@bna.com

To contact the editor responsible for this story: Penny Sukhraj at psukhraj@bna.com

For More Information

The Ministry of Finance notice stating suspension of the circular is at:

<http://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/585/Press-Release-Clarification-on-Indirect-Transfer-provision-17-01-2017.pdf>

The suspended circular meant to clarify taxation of India-focused foreign funds is at:

http://www.incometaxindia.gov.in/communications/circular/circular41_2016.pdf

Contact us at <http://www.bna.com/contact-us/> or call 1-800-372-1033

ISSN 1947-3923

Copyright © 2017, The Bureau of National Affairs, Inc. Reproduction or redistribution, in whole or in part, and in any form, without express written permission, is prohibited except as permitted by the BNA Copyright Policy.