Publication: The Economic Times Mumbai;Date: Jan 30, 2013;Section: Corporate;Page: 5

Voda-like Deals may be Spared Tax Penalty

Finmin looks to spare penalty and interest on taxes levied on cross-border deals

M PADMAKSHAN MUMBAI

The finance ministry is considering amending the Income Tax Act, empowering the tax authorities to spare companies from paying penalty as well as interest on taxes levied on indirect transfer of Indian assets through sale of shares abroad.

Tax experts say the measure, if incorporated in the upcoming Budget, will be applicable to a clutch of transactions carried out in recent years, notably Vodafone's acquisition of Indian telecom major Hutch Essar, Foster Australia's sale of its Indian arm to SABMiller and the acquisition of Idea Cellular by the Aditya Birla Group. Senior officials in the tax department confirmed that a change in the I-T Act was being considered. While the assessing officer (AO) dealing with a particular case has the power to exempt a tax-payer from interest and penalties, the thinking in the ministry is that changing the law to provide statutory backing would make the tax regime more predictable.

The tax department officials cautioned that a final decision had not been reached. Further, it is not clear whether the interest would be totally scrapped or only in part. The need for a provision to explicitly waive penalty and interest on the tax payable on such cross-border deals have arisen from a provision in the 2012-13 Budget which was inserted to retrospectively tax past cross-border deals.

The current thinking was that interest could be charged from the day the controversial retrospective amendment came into force. The retrospective amendment was unveiled when the Budget was presented to Parliament on March 16, 2012. The Budget was passed by Parliament on May last year and the President of India gave her assent later that month.

Speaking to ET TP Ostwal, a senior chartered accountant, told ET: "It is only fair to the taxpayer not to charge interest for a period in which he was not sure whether to pay tax in India or not." The tax demand on cross-border acquisitions of Indian assets or companies would cross about . 60,000 crore and half of this amount is accounted for by interest and penalty, according to an informal estimate prepared by the I-T department. M Lakshminarayanan, head of tax at Deloitte India told ET, "There are already guidelines to waive off penalty and interest in such cases. However, if itcomes as a law there will be greater clarity on such issues." Vispi Patel, founder, Vispi T Patel & Associates said, "Such a measure will provide better clarity to the issue." The I-T department last month issued a tax demand of about . 14,000 crore to Vodafone in the first week of January. Of this, the original tax demand is just over . 7,000 crore, the rest being interest calculated from 2007.

The provision was introduced after the SC ruled that Vodafone could not be taxed in India on its acquisition of Hutchison-Essar in 2007. The transaction effected in 2007 involved the purchase by Vodafone of a controlling 67% stake in Hutch-Essar from a company controlled by Hong Kong's Hutchison International.

m.padmakshan@timesgroup.com