After Vodafone notice, retrospective tax now back on government agenda

The government is taking another look at the controversial retrospective tax provision to bury it once and for all. This comes after a fresh notice to Vodafone in a $2-billion tax dispute in the middle of the high-profile Make in India week put the government in a spot over an issue that acts as a deterrent to investment.

Various models for the resolution of prickly tax issues available globally are being examined to see if these can be used to address high-profile cases that have attracted the 'tax terrorism' label.

These include the kind of negotiated settlements used in OECD countries or creating provisions to allow for specific directions from experienced officials on the Central Board of Direct Taxes (CBDT), said an official aware of deliberations on the issue.

Under the current rules, CBDT members can't give directions in specific cases to assessing officers, who sometimes have been in the job for barely a year and lack the experience to deal with complicated tax matters, the official said.

The government is keen to settle the issue quickly as it could undermine attempts to attract investment to speed up economic growth from the 7.6% forecast for this year.

If a considered view is reached, an announcement could even be made in the Budget, said the official cited above. Finance Minister Arun Jaitley will present the Budget on February 29.

Soon after taking over in May 2014, the Narendra Modi government had promised a predictable, stable and non-adversarial tax regime.

However, it didn't roll back the controversial retrospective amendment of the income tax law introduced in 2012 by the previous administration. Vodafone didn't hide its annoyance at last week's repeat notice, all the more galling as the company has repeatedly pledged further investments in India, one of its most crucial markets.

"In a week when PM Modi is promoting a tax-friendly environment for foreign investors, this seems a complete disconnect between government and the tax department," Vodafone had said in a February 16 statement issued after it received the tax notice.

Policymakers are convinced that the provision is unlikely to yield any revenue but merely tarnishes India's image and are keen that some solution be found. The Vodafone case is now in international arbitration but since the demand has not been stayed by any court, an assessing officer is compelled to keep issuing notices to the company to pay the disputed amount or risk assets being seized. Revenue Secretary Hasmukh Adhia had played down the notice by terming its issuance as being a routine, unavoidable administrative exercise. Under the current settlement rules, tax authorities and even the Settlement Commission cannot provide any relief on the quantum of tax. In the Vodafone case, this is now estimated at over Rs 20,000 crore.

A panel headed by Partho Shome, tasked by the previous government to look into the matter, had suggested that interest and penalties should not be levied in a case that involved a retrospective amendment and that such changes should in any case be made in the rarest of instances.

There have been discussions in the past on a framework for negotiated settlements in the tax law to deal with such situations, thereby reducing litigation. A change in law will allow authorities to reach a negotiated settlement on the tax amount as well.

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