MAT Relief for Foreign Portfolio Investors Likely

A circular may be issued soon saying tax demands not to be pursued; changes to the law may be carried out in the next budget to provide legal certainty, says a finmin official

The government may soon tell tax officials to stop pursuing minimum alternate tax demands against foreign portfolio investors (FPIs), seeking through this one measure to give investor sentiment a sharp boost and head off further legal wrangles over the levy. It will also bring swift closure to the biggest tax controversy concerning foreign investors after the Vodafone case.

The Narendra Modi government had promised a stable and fair tax regime soon after taking over and is therefore keen on resolving the matter quickly as it looks to attract investment to revive growth.

The likely move on MAT will follow the recommendation of a high level panel that overseas investors should get relief even prior to April 1, 2015, and not just after that date as mandated in this year's budget. The government could introduce a specific provision in next year's budget to back up any notice giving immediate relief.

“A circular may be issued soon saying government had decided to accept the Justice AP Shah panel report and tax demands not to be pursued,“ said a finance ministry official, adding that changes to the law may be carried out in the next budget to provide legal certainty. ET had reported the Shah panel's recommendation on August 22.

Tax authorities have so far raised 68 tax demands adding up to ` . 602 crore. Experts said a circular will also allow litigating foreign investors to withdraw cases.

“The government should quickly issue a circular stating that MAT should not be applied to FPIs for the period prior to April 1, 2015, as well,“ said Suresh Swamy, partner, tax and regulatory, PwC India.

“If this clarification is issued, it will prompt the current litigants to withdraw their cases from the high court.“ Several FPIs have approached the Dispute Resolution Panel (DRP) against the demand. Once a circular is issued, the DRP will be able to dispose of the applications in favour of the FPIs, thereby resolving the issue, Swamy said. Finance minister Arun Jaitley had exempted capital gains made by foreign investors from the levy of 20% MAT from the current fiscal but not retrospectively be cause of a ruling by the Authority of Advance Ruling in 2012.

The ruling had said the Income Tax Act did not make a distinction between Indian and foreign companies and therefore MAT applied to the latter as well. This prompted the tax authorities to issue the notices, asking some overseas investors in the capital markets to pay back taxes on capital gains arising from the sale of securities.

This unnerved foreign investors who said tax authorities were reopening past cases, pushing some of them to withdraw capital. The government then referred the matter to the panel headed by retired Justice A P Shah. The Central Board of Direct Taxes, the apex direct taxes body, has already clarified that MAT will not apply to investors coming through countries with which India has tax treaties and has also directed tax authorities to decide any claim for treaty benefits within a month.

No More Waffling & Arbitrariness

Issuing a circular to grant FPIs a tive exemption from MAT is the right thing to do. The circular should reflect the recommendations of the Shah panel on why FPIs should be spared from paying MAT on their income from sale of Indian shares in the past few years. More important, the government should clearly present its case to the Supreme Court to ensure that the ruling is in favour of FPIs. An amendment in the Budget makes sense to lend certainty to taxpayers. This is not unusual. In 2004, the government introduced a retrospective amendment exempting residents of Sikkim from income tax. But the arbitrariness in our tax regime must end.

(Economic Times)