

**COS TO GIVE UNDERTAKING ON SETTLEMENT**

# Retro Tax: Govt Pads Up Against Future Claims

Looks to ensure other stakeholders don't seek damages at global forums

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**New Delhi:** The Centre will ensure that adequate safeguards are in place when settling retrospective tax disputes with companies to protect itself from possible future challenges from any stakeholder at global forums. The government is in discussions with legal experts to ensure that undertakings to be filed by companies and settlement arrangements are bulletproof with regard to international provisions, a government official said.

"We have to ensure that there is no room for any future challenge to the government," he said.

The discussions are aimed at ascertaining whether any entities apart from the company have the right to file such challenges overseas if a case is settled.

In the Cairn case, for instance, the settlement amount is likely to be about ₹1,000 crore, well short of the \$1.7 billion (₹12,600 crore) that Cairn has claimed.

The government will only refund the principal tax collected under the provision and not pay any interest or penalty — hence the difference between the two amounts.

## Taking Cover

Govt to ensure it is protected after retro tax settlements



In talks with legal experts on draft of undertaking

Draft to keep in view any possible global challenges

Talks on with cos; rules to be firmed up soon

Board resolution: write-off of liabilities from books to be examined

# Rules in the Works

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The question is whether another stakeholder can oppose the settlement given that the amount is less. A tax expert with a leading consultancy said the wording of the undertaking will need to be seen from the perspective of international law to ensure this. He also pointed out that the issue may only arise in cases where an arbitral award has been granted and the company is giving up its right to collect what its international shareholders may see as a significant amount.

"Possible tax receipt expected from the Indian government due to litigation will have to be written off from the books of the companies for any shareholder to enforce any claim," the expert said. "Foreign auditors will have to be convinced in companies' writing off tax provisions made earlier resulting in one-time increase in income in the books of account."

The government is also in touch with companies on the rules and the undertaking to be given before these are finalised. Regular discussions have been held with representatives of companies including Cairn on the settlement, the official said. The government will announce the rules after discussions to ensure that they are not cumbersome but address the concerns of all stakeholders, he said.

"The furnishing of undertaking waiving the right to claim any remedy is only fair and gives an easy way out of the battle," Ra-

kesh Nangia, chairman, Nangia Anderson India said. "The taxpayers who have been granted arbitral awards shall not be able to enforce the same in the future and shall equitably be relieved of litigation and shall be granted a refund of taxes collected/refunds adjusted as per law."

Transaction Square founder Girish Vanwari said, "The government will have to work out ways in which it can ensure that shareholders don't claim interest or damages in other jurisdictions even after a company has given an undertaking that it would not litigate."

## CASE FILE

India has passed a law scrapping the retrospective provision in the income tax law to tax the indirect transfer of assets, nullifying demands raised on transactions prior to May 31, 2012 when it came into force. The amendment passed in the Parliament provides a mechanism for settling litigation, including at international forums, with Cairn Energy, Vodafone and 11 others.

The law provides that the government will withdraw all tax demands levied retrospectively and also refund taxes collected, without interest and penalty, to settle the matter if the companies withdraw legal challenges filed before all tribunals. The government has collected ₹3,000 crore in taxes in four of these instances, including ₹7,800 crore from Cairn.

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