Finance Ministry drafts Rules to implement law burying retro tax

Sets mechanism for withdrawal of cases, indemnity from future litigation, ring-fencing Indian assets abroad

OUR BUREAU

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The Finance Ministry has come out with draft rules to implement the new law burying retrospective taxation. The draft rules propose a mechanism for withdrawal of cases, indemnity from any future litigation, ring-fencing Indian assets abroad, and the timeline for phased settlement of the matter.

The draft stipulates that the companies concerned will irrevocably withdraw, discontinue and not pursue any law suits, arbitration, conciliation or mediation either in India or abroad. They will have to withdraw proceedings to enforce or pursuing attachment in respect of any award against the Republic and/or all Indian affiliates. The draft defines Indian affiliate as any department, agency, instrumentality, public sector company or any other entity of the Republic of India owned directly or indirectly in India or any other country or territory outside.

No future claims

It wants companies to commit to not making any future claims. This is to safeguard against a separate interested party such as direct or indirect shareholders, or any other beneficial owner filing

any claim against the Republic or Indian affiliates post filing the undertaking to withdraw current proceedings.

According to the Central Board of Direct Taxes (CBDT), the Income-Tax Rules, 1962 are being amended by inserting Rule 11 UE along with Forms 1 to 4, which specify the conditions to be fulfilled and the process to be followed to give effect to the amendment made by the 2021 Finance Act.

The timeline

Stakeholders have been given time till September 4 to give their views, and then the Rules will formally be notified. Once the draft is notified, then the companies concerned will be given a certain time to file Form 1, undertaking to use the provision of law. The tax authority will have 15 days to pass an order and issue a certificate in Form 2. From the date of receipt of this form, the entity concerned will have two months to withdraw the litigation(s) and inform the Department via Form 3.

Based on that, the jurisdictional Principal Commissioner or Commissioner will issue directions stating that tax demand orders shall be deemed to have never been passed. This order will be binding on the Assessing Officer (AO), who will revoke the attachment (if any) and issue refund within 30 days.

By Indian law & courts

According to Sandeep Jhunjhunwala, Partner with Nangia Andersen LLP, "interestingly, any dispute with respect to any of the prescribed Forms or orders under these rules would be governed by Indian laws and Indian courts would have the exclusive jurisdiction to decide the disputes."

The new Finance Act amended the Income-tax Act, 1961 and the Finance Act, 2012 to ensure that any demand raised for offshore indirect transfer of Indian assets made before May 28, 2012 will be nullified subject to some conditions like withdrawal of litigations. Once these conditions are fulfilled, the government will refund the tax amount paid by the companies. Seventeen tax demands were validated by the retrospective amendment, out of which the government got tax only in four cases.

Draft retro tax rules released

OUR SPECIAL CORRESPONDENT

New Delhi: The draft rules for the Taxation Laws (Amendment) Act, 2021, which would end the retrospective tax disputes with Cairn Energy and Vodafone Plc, commits to refund the principal sum within a 30-day time period after compliance of all formalities.

The companies concerned have to give an "irrevocable" undertaking to withdraw all legal cases against the government as well as undertake not to pursue any in the future.

The Central Board of Direct Taxes (CBDT) has released the draft rules that specify the conditions to be fulfilled and the process to be followed to give effect to the amendment made by the 2021 Act.

The CBDT sought comments from all stakeholders and the public by September 4.

According to the proposed rule 11UE(5), the assessing officer shall issue a refund within 30 days of getting a direction from the Principal Commissioner or Commissioner of Income Tax.

Tax experts said this should give some confidence to firms such as Cairn Energy and Vodafone to avail the offer, even though the forms were quite cumbersome.

During the Monsoon session, Parliament had passed the Taxation Laws (Amendment) Bill, 2021 seeking to nullify the controversial retrospective tax provision introduced in 2012 under the UPA government. The move is aimed at ending tax disputes with Vodafone, Cairn Energy and over a dozen other companies, besides facilitating fresh foreign investment.

PROMISES

- Department to refund the principal sum within 30 days after all formalities are complete

- The firms concerned have to give an "irrevocable" undertaking to withdraw all legal cases against the government as well as undertake not to pursue any in the future

Subsequent to the amendment in the Income Tax Act in 2012 applying the provision retrospectively, income-tax demand had been raised in 17 cases. In two cases, assessments are pending because of a stay granted by the high court.

Of the 17 cases, arbitration under the Bilateral Investment Protection Treaty with the United Kingdom and the Netherlands had been invoked in four cases. In two cases, the Arbitration Tribunal ruled in favour of the taxpayer and against the I-T department.

Finance secretary T.V. Somanathan said a total of Rs 8,100 crore was collected using the retrospective tax legislation. Of this, Rs 7,900 crore was from Cairn Energy alone. This money will be repaid. As much as Rs 1.10 lakh crore in back taxes was sought from 17 entities that were levied taxes using the 2012 legislation. Of these, major recoveries were made only from Cairn.

Tax advocate Narayan Jain said: "The draft rules prepared by CBDT run into as many as 30 pages. These should be simplified and made crisp."

"The parties concerned as well as the income tax department should cohesively work so that litigations come to an end and eligible parties get refund of tax paid by them without any hassle or delay. The underlying principle of ease of doing business needs to be followed in its spirit even in such income tax matters," he added.

Sandeep Jhunjhunwala, partner at Nangia Andersen LLP, said: "Any dispute with respect to any of the prescribed forms or orders under these rules would be governed by the Indian laws and theIndian courts would have the exclusive jurisdiction to decide disputes."