

After Shell, Hindalco faces transfer pricing tax notice

After Shell, it's the turn of the Aditya Vikram Birla group to get a taste of the income-tax medicine on transfer pricing. Hindalco, the owner of Novelis, is set to get a notice from the income-tax department for "earning" fees while giving corporate guarantees to foreign banks that gave loans to its subsidiary AV Minerals BV, Netherlands.

According to a transfer pricing order dated January 30, 2013, for the assessment year 2009-10, the transfer pricing officer has made an adjustment of Rs 1,063 crore by imputed guarantee fee of 11.84 per cent and 9.79 per cent on two corporate guarantees provided by Hindalco to foreign banks for granting loans to AV Minerals, which borrowed from various lenders for the \$6-billion acquisition of Novelis in 2007.

Legal sources said no tax demand had yet been made on Hindalco, but it was expected in the next few weeks. This is bad news for Hindalco, which has already filed an appeal against the income-tax department for a transfer pricing order for the 2008-09 assessment year.

"Last year's Budget had made a provision to tax corporate guarantees given to overseas companies. The final order on Hindalco will depend on various factors, including whether only a letter of comfort was issued or actual corporate guarantee was given," said Mukesh Butani, partner, BMR Legal.

For 2008-09, following directions from the dispute resolution panel, the assessing officer had made an adjustment of Rs 270 crore to the total income on account of an arm's-length fee of corporate guarantee provided to foreign banks for loans to A V Minerals. The matter is now pending in the income tax appellate tribunal. The guarantee had to be given by Hindalco, as the special-purpose vehicle did not have any revenue stream of its own. Normally, a company charges a fee while giving a corporate guarantee. But when a transaction takes place between associate firms, a company makes an "adjustment". The I-T department argues this fee is taxable.

A Hindalco spokesperson did not comment on the issue but an insider said the company would appeal after the I-T department issued the notice.

Transfer pricing is normally used in accounting for transfer of goods or services from one place to another, or from one firm to another under the same parent company.

The transfer pricing issue is becoming a bone of contention between firms operating in India and the I-T department. On February 4, energy major Shell had blasted the department, saying the notice to its Indian arm was like imposing tax

on FDI. The I-T department had made a tax demand on Shell, saying it had undervalued its Indian subsidiary while making fresh investment into it.

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