

Back-dated I-T law will not override tax treaties: Pranab

The proposed retrospective changes in the income tax law are only 'clarificatory' and will not override double tax avoidance pacts, the Finance Minister, Mr Pranab Mukherjee, has said.

Mr Mukherjee's statement is unlikely to bring any relief to telecom major, Vodafone, in the controversial tax issue related to its \$11.2-billion deal with Hutchison Whampoa in 2007. This is because the Vodafone matter is strictly not a treaty case, say tax experts.

Vodafone had recently sent a notice of dispute to the Indian Government that may lead to international arbitration.

In a written reply to a question in the Lok Sabha on Friday, Mr Mukherjee said that it is tax treaties that were relevant for taxation of non-residents in the case of offshore mergers and acquisitions.

The Budget proposal of 24 retrospective amendments have put foreign investors in a spot as they fear that this would lead to tax liability in India for gains made on offshore deals.

There has been hectic lobbying both within the country and abroad seeking a relook at the proposals.

Mr Mukherjee said the clarificatory amendments had been proposed in the Finance Bill 2012 to state the legislative intent of certain provisions of the Income-Tax Act relating to offshore mergers and acquisitions.

Since the proposed amendments just clarify what is already there in law to remove ambiguity and provide certainty, it will not have any impact on foreign investment flow in the country, Mr Mukherjee said.

However, tax experts said they were still wary of GAAR (General Anti-Avoidance Rules).

Mr Ved Jain, head of Assocham's Direct Taxes Committee, said, "The threat of GAAR remains. The authorities could bring offshore deals with underlying Indian assets to tax by invoking GAAR. Retrospective amendments may not override treaties, but GAAR could, as proposed in the current form," he said.

Mr Aseem Chawla, Partner, Amarchand & Mangaldas, said taking the proposed legislative amendments holistically, the Lok Sabha reply is wanting in intent, purpose and clarity.

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