

CBDT may waive off interest, penalty on retrospective tax: Chidambaram

The Central Board of Direct Taxes is considering issuing a circular waiving interest and penalty on taxes companies may have to pay as a result of the controversial retrospective amendment seeking to tax the indirect transfer of assets, the finance ministry has said, opening up the possibility of a settlement of the long-running tax dispute with Vodafone Plc.

"A clarificatory circular on charge of interest, penalty and disallowance of expenses is under consideration of the Board (Central Board of Direct Taxes) in regard to retrospective impact of amendments in the Finance Act, 2012," the finance ministry said in a document distributed at the Economic Editors' Conference in Delhi on Monday.

The income-tax act empowers the CBDT to grant relief by exempting a class of taxpayers from interest and penalty. Finance minister P Chidambaram, in response to a query at the conference, also indicated that the government is keen to settle the issue at the earliest and would not wait until budget to make changes in the tax law to allay apprehensions of foreign investors.

"The Shome Committee report on retrospective legislation is under examination and we would have to complete that examination quickly and take a view," he said at the conference. "Once we take a view, I see no reason why we should wait for the Budget session. We should move whatever changes have to be brought about in Parliament as early as possible," he said.

Though, the minister did not indicate the nature of the amendment, the Shome panel has recommended that government should only look at collecting tax on such transactions and not interest or penalty.

Chidambaram said the resolution of tax disputes, both pending and anticipated, is good for the country, economy and investments.

Apart from indirect transfers, the circular would also cover other amendments including one on taxing royalty payments on software and cases impacted by changes in transfer pricing norms.

Tax experts say this practice should be followed in all cases of a retrospective change.

"This (waiver from interest and penalty) should be done for all substantive retrospective changes including those covering withholding tax," said Sudhir Kapadia, national direct tax leader, Ernst & Young.

The waiver will benefit at least half-a-dozen companies, but potentially the biggest beneficiary of such a circular will be Vodafone. It's not clear if Vodafone is open to a settlement in which pays the principal amount but is spared of the burden of interest and penalty.

The UK-based telecom company had deal acquired Indian telecom company Hutchison Essar in 2007 from Hong Kong based Hutchison Whampoa through a \$11.2 bn overseas

transaction.

The income tax authorities slapped a Rs 20,000 crore demand on the company for not withholding tax on the payment made to Hutchison Whampoa, which the company disputed. The Supreme Court ruled in favour of the company, but the government amended the Income Tax law retrospectively in the budget this year, which will make the company liable to pay tax.

If the interest and penalty are deducted, the tax liability will drop to Rs 8,000 crore. The board has earlier also used its powers to waive penalty and interest, to remove hardship due to any retrospective change in tax law. Vodafone said last month that it was considering making a provision towards legal risk in the country.

(Economic Times)