

FPIs Run into a Wall of Confusion After I-T Notices

Dispute Resolution Panel asks investors to submit additional material in 9 days

Overseas investors, soothed by Finance Minister Arun Jaitley's bid to reassure them about the retrospective levy of minimum alternate tax (MAT), got an unexpected jolt at the end of last week.

The Dispute Resolution Panel (DRP) of the income-tax department sent notices to foreign portfolio investors (FPIs) on Friday, telling them that the hearing of MAT disputes would start soon. The investors would have to submit any additional material in this regard within the next nine days, it said.

Investors had been under the impression that such disputes were on hold until a newly constituted government panel reported on the matter or the Supreme Court gave its ruling on a MAT case.

The government last week formed a three-member committee under retired judge AP Shah to see whether MAT could be levied on FPIs. The committee is expected to submit its report in three months. Besides this, a case between the revenue authorities and Castleton (an FPI) is currently pending in the Supreme Court.

“The DRP has sent notices to FPIs asking them to immediately submit additional details, which they had not submitted before the assessing officer or additional grounds regarding their ongoing appeals,” said Rajesh H Gandhi, partner, tax, Deloitte Haskins & Sells. “While this is otherwise a normal procedure, in the case of the MAT issue hopefully the department does not commence the DRP proceedings till the time the Shah committee issues its report.”

The dispute, which has unnerved foreign investors, began when the income-tax department started sending notices to FPIs about six months ago asking them to pay MAT for FY12.

Many tax experts say MAT cannot be applied to an entity that doesn't have a so-called permanent establishment in the country. By the last week of March, several FPIs had been served with notices asking them to pay the tax.

Some investors approached the DRP and Commissioner of Appeal (CoA) for resolution of the matter while others filed a writ petition in the Bombay High Court challenging the revenue department. The government intervened after many FPIs lashed out at what they described as the uncertainty plaguing India's tax administration. The government has been at pains to change the image of India as being aggressive on taxation in order to drum up investment.

The cases filed in the high court have not been heard as yet, presumably because it would ideally like to wait for the committee's report or the Supreme Court judgment, experts said.

The FPIs were hoping that the MAT issue would be put on hold for some time and that the DRP would not pursue the disputes pending the panel report and the top court's judgement.

“What I feel is that the DRP is looking to expedite the entire assessment process in respect of the funds which were issued tax demands on the issue for the assessments concluded on March 31, 2015,” said Manoj Purohit, partner, Walker Chandniok. “The CBDT had also issued an instruction to the tax officers to take a decision within one month of the date on which the claim is filed. The notices are basically asking FPIs to substantiate their stand.”

All the FPIs that have received notices will now have to submit MAT calculations to the DRP in the next nine days, starting from when the notice was issued. The FPIs are now considering whether to submit expense claims as MAT is levied on book profits and the contention of the investors is that it cannot be levied in the first place.

Industry trackers said that the DRP can technically rule out a decision on the MAT cases before it before the committee report or the Supreme Court judgment. “Since the matter is sub judice and that the matter on similar issue is pending before Supreme Court, it will be interesting to see if DRP takes any position before the said decision,” Purohit said.

The move may muddy the waters further. “Initiating appeal proceedings now without waiting for the Shah Committee report can confuse foreign investors,” Gandhi said.

(Economic Times)