

## **Finance Ministry rejects Vodafone's rejoinder on retrospective tax**

The Finance Ministry has rejected telecom operator Vodafone's rejoinder, seeking an undertaking that a retrospective tax amendment would not apply to it.

The Finance Ministry's reply will now go to the Prime Minister Office for approval.

Late in June, Prime Minister Manmohan Singh took additional charge of the Finance Ministry after Pranab Mukherjee stepped down from that position to run for President of the republic.

Under the terms of the amendment, Vodafone Group would have to pay about Rs 20,000 crore in capital gains tax, penalty and interest on its 2007 acquisition of Hutchison Essar.

Vodafone has been battling the tax claim since January this year, and got relief from the Supreme Court in March, following which Mukherjee, then Finance Minister, moved the retrospective tax amendment in the Union Budget seeking withholding tax on overseas deals if they involved assets based in India.

There have reports that Vodafone and the Indian government might settle the tax case out of court. Sources say the company would be willing to pay tax to the tune of Rs 8,000 crore and could seek a waiver of penalties and interest.

Montek Singh Ahluwalia, deputy chairman of Planning Commission, and Analjit Singh, chairman of Vodafone India, met last month, but there have been talks on between the two sides to find a solution for some time now, sources said.

After Thursday's meeting, Analjit Singh said he had not discussed Prime Minister Manmohan Singh's likely review of tax policies with Mr Ahluwalia, saying he "did not want to embarrass Montek".

Earlier, sources said that the Income-Tax department was unlikely to issue any fresh notice soon to Vodafone as it was awaiting clarity from the Prime Minister's Office on the retrospective tax legislation. The PMO and the Finance Ministry are in discussions on this. The Prime Minister has said that problems on the tax front need to be addressed.

The Income Tax department is also waiting for a Bombay High Court judgement in the Vodafone case. Vodafone has challenged a notice issued under Section 163 of the Income-Tax Act that treats the company as an agent of the Hutchison Group, the previous owner of Vodafone India. The court will hear the case next on July 27.

The IT department is expected to treat this as a test case for it under the amended Income Tax Act.

Since the acquisition had taken place overseas, the telecom giant had argued that it was not subject to Indian tax law. However, the IT department said the deal was subject to capital gains because the underlying assets were based in India.

On 20 January 2012, the Supreme Court ruled in favour of Vodafone in the tax dispute and said that Indian tax officials did not have jurisdiction over a deal between two global companies even if assets involved in that deal are located in India.

Mr Mukherjee then defended his tax proposal, saying that the power was vested with the legislature to make law.

Pressure soon started mounting from international trade bodies and investors, and in a letter to Prime Minister Manmohan Singh, Vodafone group chief executive Vittorio Colao opposed the tax proposal.

The Vodafone group earlier this year filed a tax arbitration petition under the Netherland BIPPA through its subsidiary there. It had served the Indian government with a notice of dispute regarding the retrospective tax proposal, claiming that the 2012 Finance Bill proposals violated international legal protections granted to Vodafone and other foreign investors in India.

Finance Secretary R S Gujral earlier in May also reiterated the government's position, saying that there is "no question of the government negotiating with any company".

"As per statute, certain levies are leviable or not, there is no question of government negotiating," he told NDTV Profit in an earlier interview.

Gujral had on April 20 said that Vodafone always knew about the tax liability after a meeting with US Treasury Secretary Timothy Geithner. This was followed by

meetings between Gujral and Analjit Singh, and was followed by another meeting between Gujral and Colao.

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