

Vodafone to opt for international arbitration against Indian tax authorities

British telecom giant Vodafone is likely to rely on international arbitration under the India-Netherlands investment protection agreement rather than approach Indian courts as its epic dispute with the Indian tax authorities looks set to resume soon with the passage of the Union Budget. An executive aware of the company's plans said the international arbitration route would be preferable as domestic options may be limited.

The development comes even as inter-ministerial government panel on Monday decided to inform Vodafone that its arbitration notice under the India-Netherlands investments protection treaty was premature.

"We will tell them that their notice under India-Netherlands BIPA (Bilateral Investment Protection Agreement) is premature," a senior finance ministry official told ET after Monday's meeting, and added that the inter-ministerial group has finalised its response.

Vodafone, however, is of the view that the Indian government had breached clauses in the bilateral tax treaty that calls for 'fair and equitable treatment of investments', thereby violating legal protections granted to the company, the executive quoted above added.

Last month, the Dutch subsidiary of UK-based telecom major Vodafone, had served a dispute notice to the Indian government, the first step towards initiating international arbitration proceedings under the India-Netherlands bilateral treaty after the 2012 budget gave the government power to retrospectively tax the company's \$11-billion acquisition of Hutchison Essar in 2007.

The government had set up an inter-ministerial group headed by finance secretary RS Gujral to frame its response to Vodafone notice. Other members of the group include officials from the ministries of external affairs, telecom, law and revenue.

The government says the retrospective amendment will impact only those transactions in which assessment order has not yet been passed. The finance ministry has also maintained that tax issues are not covered under India-Netherlands BIPA.

The Finance Bill 2012 has not yet received presidential assent.

Vodafone plans to counter the finance ministry's stance that the government had the right to make retrospective amendments and several countries had resorted to such steps. The mobile phone major will argue that international examples of retrospective tax laws cited by the finance ministry were misleading as they had never resulted in companies that had won final judgements from the highest courts having to cough up tax for past deals, the executive quoted above added. Vodafone did not reply to specific queries on its legal strategy but said it would take all possible steps to safeguard its shareholders' interests. "It would be grossly unjust if Vodafone were to be charged tax on a gain made by someone else on the basis of legislation passed five years after the event," the company added in its email reply.

In the arbitration proceedings Vodafone is also set to argue that it was being targeted, as it believes the retrospective laws were introduced to tax its 2007 transaction. It is likely to

point out that the government here had made no attempts to target similar deals involving Indian assets that had happened prior to 2007, the executive aware of Vodafone's plans added. It is also likely to argue that tax was indeed covered to the extent that the behaviour by the tax authorities violated norms of fair and equitable treatment.

The company expects the arbitration procedure to take about two years and is looking at a verdict by 2014.

(Economic Times)