SHARP & TANNAN

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Taxation Laws (Amendment) Bill, 2021 | Withdrawal of Retrospective Taxation

The Finance Bill 2012 had brought in a retrospective clarification in the income-tax Act that any indirect transfer of shares or any interest in a company would be taxable as capital gains if the assets of such company are located in India. This clarification took retrospective effect from 1 April 1962. Hence the Vodafone case, which was settled by the honourable Supreme Court (in favour of assessee) in early 2012, was sought for re-assessment. Similarly, retrospective taxation was sought to tax Cairn Energy Plc and many other assessees in 2020.

Both the assesses, (i.e. Vodafone and Cairn) approached international arbitration tribunal which held that the retrospective taxation was against the India-Netherlands investment treaty agreement (Vodafone case) and was inconsistent with the UK-India bilateral treaty (Cairn Energy Plc case). The tribunal ordered the Government of India (GOI) to pay damages to the assessees on this account.

Proposed amendment for withdrawal of retrospective levy:

Subsequent to the orders of international tribunals, the GOI vide Taxation Laws (Amendment) Bill, 2021 (TLA), has proposed to amend the chargeability of such retrospective transactions. Accordingly, it is proposed that any indirect transfer made before 28 May 2012, will not be brought to taxation in respect of:

1. Pending and concluded assessments.
2. Orders passed/to be passed which have the effect of reducing a refund or enhancing a liability.
3. Holding the assessee in default, for not deducting TDS on such transactions.
4. Interest and penalties due under concluded assessments.
5. Refunds: Refunds, if any, will be granted without interest thereon.

The assessees will be given reliefs for such assessments or, refunds, if due, will be paid back once the assessee meets the following conditions:

1. Withdraws (or agrees to withdraw) the appeal pending before any Court of law in India.
2. Withdraws (or agrees to withdraw) any litigation before any international forum/courts or under any treaty between India and another country.
3. Withdraws (or agrees to withdraw) any monetary claims for damages or otherwise under bilateral laws of the countries involved.
4. Other conditions to be specified.

Weblink http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/120_2021_LS_E.pdf

Therefore

- The present condition of the economy warrants higher foreign investments / inflows to accelerate the economic growth.
- At this crucial stage, promoting investments in India is of much significance than turning off the potential investors.
- To make India a destination of investors' choice would certainly demand a prudent move from the Government which fosters economic growth.

Considering the above factors, the Government's move to withdraw retrospective taxation is apt and most welcome from the Foreign Direct Investment point of view.