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Transfer pricing disputes: Agreement with US to bring relief to MNCs

Deal likely during Barack Obama's visit; more than 250 cases against American companies, dating back to 2004

Jayshree P Upadhyay | New Delhi January 24, 2015 Last Updated at 00:59 IST

India is set to sign an agreement with the US to resolve transfer pricing disputes, which will then serve as a template for settling such rows with multinational companies based in the UK, France and other European countries.

India and the US have finalised a framework to tackle cases that fall in the ambit of the mutual agreement procedure. The agreement may be signed during US President Barack Obama's visit to India beginning on Sunday.

India is targeting signing the advance price agreement with the US in three months, but only after the framework for pending cases starts yielding results. The major concern for multinational companies and other nations is the mark-up and tax dues on costs for services provided.

BREATHER ON CARDS

- India, US to tackle cases falling under the mutual agreement procedure
- The countries finalise framework to resolve cases in litigation and dispute
- To resolve 60 cases in the first tranche
- Framework to establish markup for cases based on business activity for tax liability
- India looks to sign agreements with European nations, including UK and France

New framework
"Instead of a fixed mark-up, the framework sets out the process for determining it. The mark-up will be based on activities of the company. That will make it easier for companies and tax authorities to work through cases," said a tax official.

Now that the two sides are talking, the agreement would help resolve cases related to software development and information-technology services. In the first tranche, the governments are hoping to resolve 60 cases pending with the income tax department in various stages of litigation and assessment.

There are more than 250 cases against US companies, some dating back to 2004. Many of these include royalty and

STUCK WITH TAXMAN, SET FOR RELIEF

Company	Country	Tax liability (in ₹ crore)
Shell Plc*	UK, Netherlands	18,000
IBM	US	5,357
Cairn India	Parent in UK	5,000
Nokia	Finland	3,997
Vodafone*	UK	3,200

*Bombay High Court ruled in favour of company

permanent establishment and involve software development and infotech-enabled services.

According to sources close to the development, the Central Board of Direct Taxes is planning to outline such frameworks for European nations such as the UK and France.

'Right step'

"It is a step in the right direction and will help reduce the tax and compliance concerns of companies. But it is imperative the two governments form a policy that is forward looking and prevents tax controversies from arising," said S P Singh, senior director, Deloitte Haskins & Sells.

The framework will include the tax department's learning from the Vodafone transfer pricing issue where the Bombay High Court had ruled a share sale could not be construed as income and, thus, could not be taxed. This will offer relief to IBM, Nokia and Cairn India that are embroiled in similar cases.

Many multinational corporations adopt advance price agreements to avoid litigation while doing business in India. In 2012, 146 applications were filed, followed by 232 the next year.

India recently signed a bilateral advance price agreement with Japan's Mitsui for five years. Such bilateral agreements involve the governments on the two sides as well as the company concerned.

"Bilateral agreements score above unilateral ones between the government and the company because in many cases the company could face issues if the other government does not agree with the terms," said Rajesh Simhan, head of the international tax practice at Nishith Desai Associates.