

Tax notice to Vodafone will be contrary to PM Narendra Modi's statement: Nishith Desai, Nishith Desai Associates

By ET Now | 16 Feb, 2016, 11:13 AM IST

According to a news agency, government has asked [Vodafone](#) to pay \$2.1 billion dollar in tax bill or it may face asset seizures. Nishith Desai, [Nishith Desai Associates](#), says that if the [tax notice](#) is enforced then it would run contrary to what PM Modi has been talking about retrospective amendment.

ET Now: Are you surprised by the tax bill?

Nishith Desai: Yes, I am bit surprised by it, but we do not know the exact background. So, it could be inappropriate for me to make a total comment. If we assume the news is true, then couple of questions arises. That is whether it is a formality because law is still there. Supreme Court decided the case in favour of Vodafone and the matter is pending before international investment arbitration. Therefore it comes as a surprise, maybe it was served for formality reasons, I do not have any idea. Again it would be slightly inappropriate to make a complete comment.

If this enforcement is happening then this may go contrary to what Prime Minister Modi has been talking about retrospective amendment. Although, they have been talking in the context of prospectively not doing any retrospective amendment, there remains little ambiguity about the past and that is all being considered now. It is difficult to say why they have done it. On the other hand, about the seizure of assets as far as Vodafone BV is concerned, I do not know what assets they have. All the [investments](#) were through Mauritius, the only asset that may be considered in India will be the shares of Indian company and whether those will be attached at all will raise new questions. But, if these assets also legally belong to Mauritius company, then whether that can be attached at all is a question mark.

From tax perspective, they have brought an amendment to consider the assets were in India, even though owned by Mauritius company. The fact remains that legally the assets are of Mauritius company. Whether these assets can be seized are all open questions. This is my comment and I hope we do not send out wrong signals. If there could be proper communication from the government side that would be appropriate. This happened almost about a month ago that is what I understand, but nobody seems to have taken note of that. The verification of the news itself is another important part.

ET Now: Considering that the Supreme Court had ruled in Vodafone's favour, this seems like a new clause and this is going to be a long battle. Vodafone is not going to sit quiet if this gets implemented. They have hefty tax to pay up, but this will send a wrong message about doing business in India to foreign investors.

Nishith Desai: Yes. We are talking about Make in India and this is the right time for proper clarification. But it is completely inappropriate to make a blatant comment without knowing full facts as to why this has happened.



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