

Vodafone ruling over a retrospective tax demand may prompt others to take same route

Synopsis

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India's loss in an international arbitration case against **Vodafone Group** on Friday over a retrospective tax demand on its \$11.2-billion acquisition of Hutchison Essar's telecom business in 2007 could queer the government's pitch in other high-profile cases currently under arbitration, experts say.

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Kumarmanglam Vijay, partner at **J Sagar Associates**, said that Vodafone win at **the Permanent Court of Arbitration** in The Hague "may cause other similarly placed companies to seek arbitral reliefs". He said the space is likely to witness further action.

The government is evaluating whether to challenge the international tribunal award. "Government will consider all options and take a decision on further course of action including legal remedies before appropriate fora," it said in a statement Friday.

The government had in 2012 amended retrospectively the income tax law to nullify a Supreme Court verdict ruling that Vodafone did not have any liability to pay tax on its acquisition of Hutchison Essar stake. The government had raised a tax demand of Rs 11,000 crore.

"For all cases already going on...in all probability the (2012) retrospective amendment to the Income Tax Act would be seen as unfair," said Amit Maheshwari, tax partner at AKM Global.

However, the lack of clear law on enforcement of the arbitration awards can make it difficult for companies to get relief from the government, experts said.

"Unless the government voluntarily abides by these rulings, there is no clear mechanism forcing it to abide," said Moazzam Khan, head of global litigation at law firm Nishith Desai Associates. He said the matter could well fall in a grey area.

The Indian Arbitration and Conciliation Act only covers enforcement of arbitral awards arising from commercial arbitrations, which, the Delhi High Court - in Vodafone judgment of 2017, an earlier battle fought in the same war - has

held to be different from treaty awards which arise from disputes between a private investor and a sovereign, Khan said.

India believes that taxation matters are not covered under bilateral investment treaty and formulated a new Model Bilateral Investment Treaty text in 2015 and terminated its existing treaties with 73 countries, leaving out tax and most favoured nation (MFN) clause among various other changes.

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