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Budget 2016: Vodafone lukewarm to FM Arun Jaitley's offering in tax dispute case

By [Hema Ramakrishnan](#), ET Bureau | Mar 01, 2016, 06.00 AM IST

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Finance Minister [Arun Jaitley](#) offered an olive branch to [Vodafone](#) to end India's most high-profile tax dispute in the Budget but the British telecom giant was noncommittal in its response.

Tax experts said the company was unlikely to accept the proposal. The proposal relates to companies facing [retrospective tax](#) demands.

The government has offered to waive interest and penalty if the company pays the original tax demand. If Vodafone accepts the offer, it will end the Rs 20,000 crore row that started in 2008.

"We will of course study the detail of what the finance minister has proposed today, while continuing to seek [resolution](#) of this matter through international arbitration," the company said in a release.



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Amount Of Tax Demand Disputed In Litigation

Demand Disputed Before	Arrear Demand		Current Demand		Total	(₹Crore)
	Income Tax	Corporate Tax	Income Tax	Corporate Tax		
CIT(A)*	161700	116929	1475	9169	289273	
ITAT**	104618	47056	41	3678	155393	
SC/HCS***	3745	21329	168	226	25468	
Total	270063	185314	1684	13073	470134	

*Commissioners of Income Tax (Appeals);
** Income Tax Appellate Tribunal;
*** SC/HCS

* As of Feb 28, 2015



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"Vodafone has always maintained that there was no tax to pay at the time it completed its acquisition of Hutchison's business in 2007. This view was upheld unanimously by the Supreme Court of India in January 2012."

As the acquirer, the company had made no capital gains, it said. "Given the clarity of the Indian law in force in 2007, there was no legal basis to withhold tax," it said.

The government move may not get much of a welcome, experts said. The offer "is unlikely to cut ice with foreign companies as they are disputing the retrospective levy of tax itself," said Shefali Goradia, partner, BMR Advisors.

"If the government recognises that retrospective tax is bad for investor sentiment, it should have gone the extra mile and waived tax as well for past cases."

The government, which has pledged a nonadversarial tax regime, wants to close the chapter on retrospective [taxation](#), which it says has given the country a bad name among investors.

Afterall, service providers benefited from India's telecom policy that deliberately avoided upfront spectrum costs to aid the spread of mobile phones.

The high-volume, low-margin businesses created value for the telco, and the government is entitled to a share, say tax officials. A settlement with Vodafone will ensure the government does not give up its underlying right to tax capital gains on the value generated from economic activity here. Some experts said taxing the buyer wasn't right.

"Retrospective tax was illegal in the first place. In Vodafone's case, the basic liability of capital gains tax was not its own," said Nishith Desai, founder of Nishith Desai Associates.

"It would be better to boldly withdraw retrospective tax and put the whole issue behind." Besides Vodafone, there are close to a dozen cases on retrospective taxation.

The details are different in each case. With Cairn, for example, the government has demanded capital gains tax on the transfer of assorted subsidiaries to a single unit in India. This took place prior to Cairn India's initial public offer. Again, the company has contested the claim.

The government has also proposed a dispute resolution scheme to settle other cases, unrelated to retrospective tax, amicably.

It will allow a company to pay 30% tax along with a penalty and surcharge of 7.5% each to settle the case, the liability working out to 45%.

About 3 lakh cases are pending with Rs 5 lakh crore of demands tied up in litigation. A settlement will boost revenue, raise the tax to [GDP](#) ratio and spur growth.