Centre to Redact Retrospective Tax Laws

August 12, 2021

The contentious retrospective tax law of 2012 was used to raise large tax demands on foreign investors like Vodafone and Cairn Energy, and was blamed for vitiating India's investment climate. Finance Minister Nirmala Sitharaman recently introduced a Bill in Parliament to nullify the provision in the Income Tax Act and put an end to the 2012 retrospective amendment.The government has also proposed to refund the amount paid in litigation by companies without any interest thereon.

In news: Centre moves to redact retrospective tax law
Placing it in syllabus: Economy
Dimensions

- What is the issue about?
- Retrospective tax laws , history and their problems
- Amended provisions
- How will they help ?

Content:

What is the issue about?

- The government has recently introduced the **Taxation Laws (Amendment) Bill, 2021**, in Parliament.
- The bill seeks to nullify the contentious retrospective tax law by amending the **Income Tax (IT) Act of 1961** and the **Finance Act of 2012.**
- **Retrospective tax law of 2012** was used to raise large tax demands on foreign investors like Vodafone and Cairn Energy
- The new bill nullifies the relevant retrospective tax

clauses that were introduced in 2012 which brought past indirect transfer of Indian assets under the ambit of taxation.

Retrospective tax laws, history and their problems

- A **retrospective tax** is one that is charged for transactions in the long past. It **taxes a transaction that took place prior to the law being framed.**
- It **can be a new or additional charge** on transactions done in the past.
- Retrospective tax means creating an additional charge or levy of tax by way of an amendment from a specified date in the past.
- Usually, the **Countries apply retrospective tax to correct anomalies in their taxation policies** that have, in the past, allowed companies to take advantage of such loopholes.
- But, this retrospective tax hurts companies that had knowingly or unknowingly interpreted the tax rules differently.
- In the past, many other countries like the USA, the UK, the Netherlands, Canada, Belgium, Australia, and Italy have retrospectively taxed companies.

Retrospective amendment:

- Dictionary meaning of the word **'retrospective'** is '**looking back over the past', 'relating to or thinking about the past', 'looking backwards'** etc.
- In a similar fashion, with respect to law or statute, it simply means **'taking effect from a date in the past'.**
- Therefore, if there is an **amendment to the law** and it **is applicable from a specified date in the past** but not future, it is termed as a **retrospective amendment.**
- For example, Extension of exemption under Section 10(23C) to an income received by any person on behalf of the Chief Minister's Relief Fund, was made

retrospectively from 1 April 1998 by Finance Act 2017.

History of Retrospective Tax Laws

- In 2012, India brought in legislation mandating retrospective tax demands over deals going back to 1962 in which shares in non-Indian companies were transferred to an Indian holding company.
- By this legislation the government amended the Income Tax Act retrospectively to levy capital gains tax on transactions related to companies with underlying assets in India, although the buyer and seller may not have a direct presence in the country.
- The 2012 amendment to the Income Tax Act aimed to check the practice of Indian businesses held under entities incorporated abroad changing hands without involving a capital gains tax liability here.
- However, this was introduced as a clarification, which was applied to past transactions, too.
- The amendment came after the UPA government lost a case in the Supreme Court arising from Vodafone's acquisition of a 67% interest in an Indian telecom company from Hong Kong's Hutchison Whampoa.
- In this case, Vodafone's Dutch affiliate bought the stake from a company registered in the Cayman Islands, which directly and indirectly held a stake in Hutch Essar in India.

WAS INTRODUCED IN MARCH 2012

2007: Hutch sells 67% interest in Hutch Essar to Vodafone's Dutch affiliate through a Cayman Islands entity holding direct and indirect stake in the Indian company telco

➤ I-T demands $2.2bn capital gains as it involved Indian firm. Vodafone refuses to pay, says deal carried out offshore. Bombay HC rules for tax dept

Jan 2012: Supreme Court rules in favour of Vodafone

March 2012: Govt introduces 'retro amendment' to tax laws

Jan 2014: Tax probe against Cairn

March 2015: Cairn begins international arbitration under India-UK investment treaty

2016: Vodafone seeks arbitration under India-Netherlands treaty

Sept 2020: Vodafone wins arbitration award

Dec 2020: Int'l tribunal rules in favour of Cairn, orders govt to refund $1.4bn (with interest)

2021: Govt challenges rulings

Problems with Retrospective Tax

- ***Creates Tax Uncertainty:*** the 2012 retrospective amendments militate against the principle of tax certainty and damage a India's reputation as an attractive investment destination
- ***Disrupts Prudent Financial Management:*** Retrospective tax faces resistance because taxpayers would have paid under the earlier regime by complying with the rules at that time, and taking into account their entire budgeting ecosystem. Prudent financial management may get disrupted when retrospective tax is charged since taxpayers would be paying an additional amount.
- ***Breach of International Investment Treaties:*** India's imposition of a tax liability on Vodafone breached an investment treaty between India and the Netherlands, ruled an international arbitration tribunal last year. India has recently suffered various humiliations in international arbitration while challenging tax demands made under the retrospective clause.
- ***"Tax Terrorism":*** Retrospective taxation was still being seen as a sour point by investors. Tax Terrorism' essentially means the undue exercise of power by tax authorities to levy taxes using legal or extra-legal means. The Vodafone case is a classic example, when despite the Supreme Court order ruling in favour of the company, tax laws were amended, retrospectively.
- ***Loss of Reputation***: The retrospective taxes dented India's reputation as a fair and predictable regime. It gave rise to unnecessary, prolonged and expensive litigation

Adverse Court Rulings for India's Retrospective Taxation:

- India's imposition of tax liability on **Vodafone** breached an **investment treaty between India and the Netherlands,** ruled an international arbitration tribunal last year
- **Cairn was awarded damages** of more than $1.2 billion in December by the **Permanent Court of Arbitration at The**

Hague in the retro tax case.

- **A French tribunal** last month ordered a **freeze on some 20 properties** belonging to the **Indian government as** part of a **guarantee of the amount owed to Cairn.**

Devas Multimedia, which has won a case **against Antrix Corporation** (a subsidiary of the Indian Space Research Organisation) for arbitrary cancellation of a contract. As Devas subsequently argued in a US court, nine arbitrators and three international tribunals **had deemed the termination of the Devas-Antrix deal as unlawful**. The sums involved in each of these cases amount to $160 million dollars.

Amended provisions:

- According to the new bill, **tax claims made on offshore transactions, executed before 28 May 2012,** when the amendment to the Income Tax Act was brought out, will be **nullified**.
- The government has also **proposed to refund the amount paid in litigation by companies without any interest** thereon.
- However, the demand raised by the Indian government will be nullified based on **Specific conditions** such as **withdrawal of pending litigation**, and **companies promising that they will not claim cost, damages, interest, etc.**

How will they help?

- ***Resolving Disputes by maintaining Sovereign Right:*** The amendment maintains the "sovereign right to taxation" of Indian government and also provides a reasonable opportunity to companies to resolve the issue. This is an attempt to find a solution through the sovereign means of Indian law and not through arbitration
- ***Showcase Commitment to Tax Certainty:*** It is in line with the government's commitment to creating a non-

adversarial tax environment.

- ***Ending unnecessary prolonged litigation:*** It gives a good opportunity for the affected taxpayers to close all the past disputes and avoid future litigation costs. The move is expected to end litigation with 17 companies, including Vodafone and Cairn, apart from addressing criticism about uncertainty
- ***Restoring Investor Confidence:*** It is a welcome move for foreign investors, and it will directly result in attracting more foreign investments.
- ***Hasten Economic Recovery:*** Quick recovery of the economy is the need of the hour. In this direction, foreign investment would play an important role in promoting faster economic growth and employment

Mould your thought: Taxation Laws (Amendment) Bill, 2021 correct is a long-due measure of course-correction. Critically evaluate.

Approach to the answer:

- Introduction
- Discuss the 2012 Retrospective Tax Law
- Discuss its problems and implications
- Mention the provisions of Taxation Laws (Amendment) Bill, 2021
- Discuss the benefits of the bill
- Conclusion