Ministry of Finance

Legislation to nullify contentious retrospective taxation

Relevant for all Mahindra Businesses

13th August 2021

Introduction

In a major development which may well help India enhance its ranking in terms of ease of doing business, the government brought about a fresh set of amendments to the tax laws to nullify the retrospective tax provisions introduced in 2012.

Context

The Taxation Laws (Amendment) Act, 2021 (2021 Act), which received the assent of the President on the 13th August, 2021, has, inter-alia, amended the Income-tax Act, 1961 (Income-tax Act) so as to provide that no tax demand shall be raised in future on the basis of the amendment to section 9 of the Income-tax Act made vide Finance Act, 2012 for any offshore indirect transfer of Indian assets if the transaction was undertaken before 28th May, 2012 (the date on which the Finance Bill, 2012 received the assent of the President).

Objectives

The government has been able to get the Taxation Laws (Amendment) Bill, 2021, passed in parliament to do away with the contentious retrospective tax demand provisions that would set to end much stretched tax disputes with UK's Cairn Energy and Vodafone Plc.

The aim of the to bring tax certainty and ensure that once specified conditions are fulfilled, the pending Income-tax proceedings shall be withdrawn, demand, if any, raised shall be nullified, and amount, if any, collected shall be refunded to the taxpayer without any interest.

Salient Features

- To implement the amendment made by 2021 Act, draft rules have been prepared to amend the Income-tax Rules, 1962 which specify the conditions to be fulfilled and the process to be followed to give effect to the amendment made by the 2021 Act.
- The new legislation has amended the Income Tax Act, 1961 so as to provide that no tax demand shall be raised in future on the basis of the said retrospective amendment for any indirect transfer of Indian assets if the transaction was undertaken before May 28, 2012 - when the finance bill was passed by Parliament in 2012.

- The legislation provides that the demand raised for indirect transfer of Indian assets, made before May 28, 2012, shall be nullified on fulfillment of specified conditions such as withdrawal or furnishing of undertaking for withdrawal of pending litigation and furnishing of an undertaking to the effect that no claim for cost, damages, interest, and others shall be filed.
- Further, the law provides that any amount paid in these cases would be refunded without any interest thereon.

Ongoing arbitrations

The amendment law would give UK's Cairn Energy and Vodafone Plc a window to do away with the arbitrations and settle their long-drawn tax disputes with the government.

Conclusion

The nullification retrospective taxation provisions has brought a fresh lease of life to its strategic disinvestment plan with growing overseas investor interest in picking up management control of public sector undertakings put on the block for privatisation.

According to official sources, government has received enquiries from foreign multinational corporations about participation on its strategic disinvestment plan and the pace has increased post the Centre's decision to amend retrospective taxation provisions in the Income tax Act, bringing about certainty on taxation regulations and improving country's ranking several notches on ease of doing business index.