

Vodafone Judgment Day!

Published on Fri, Jan 20, 2012 | 16:24, Updated at Fri, Jan 20 at 16:49 Source : Moneycontrol.com



In a landmark ruling in the Supreme Court today, Vodafone won against the tax department. CNBC TV18's Payaswini Upadhyay gets quick reactions from experts on what this ruling means for foreign investment in India.

**Girish Dave, Former Mumbai I-T Commissioner.
Scripted the showcause notice to Vodafone**

"I affirm India's usual track record of defeat at the end while putting a valiant effort. Whether it is a battle, whether it is a hockey match, cricket match or any other event.

Department, after putting its valiant effort, has lost in the last, that's all."

Daksha Baxi, Executive Director, Khaitan & Co

"This is really a path breaking judgment, re-establishing the independence of the Indian judiciary. India is very fortunate indeed. Not only have the judges found that the transaction of Hutchison International having transferred the whole business through sale of shares of a foreign company is not taxable in India, they have made several very important comments: The structure existed since 1994, there was no tax evasion planned, Hutchison was not fly by night operator, the transaction was a genuine tax planning, and is permitted. Section 9(1)(i) does not have "look through" approach. It has 'Look at' approach. The judges have said that the investors have a right to have tax certainty. This seems to indicate that the Court has actually even understood the pain and impact that the international investor community faces when such high pitched tax demands are made. We have yet to read the judgment but it seems to have dealt with issues threadbare. In all, this seems to be a well thought through judgment, which has taken into consideration the interpretation of law, the business exigencies, the international practices, the investor need and may be also the economic impact on India. I salute the conviction and astuteness of the judges."

Mukesh Butani, Managing Partner, BMR Advisors

"The Vodafone verdict will be remembered more as victory of India's fair, impartial and independent judicial system, where rule of law prevails notwithstanding the quantum of tax involved for the treasury. The SC while rendering its judgment has called upon the tax administration to legislate laws that lend certainty to the investors and something that investors deserve it as a right – This obiter dictate in my view is the most crucial part of the judgment. Rest is now history."

Nishith Desai, Managing Partner, Nishith Desai Associates

"The judgment is a great victory for taxpayers worldwide. It re-emphasizes the long standing principle that taxpayers are entitled to plan their economic affairs within the framework of the law. The decision will provide tremendous certainty to investors and provide a boost to cross-border M&As, inbound and outbound investments. Investors, welcome to India!"

Aliff Fazelbhoj, Senior Partner, ALMT Legal

"The single biggest plus point in this judgment will be to boost investor confidence globally that the Indian judiciary is strong in upholding the legal principles and not swayed by numbers. The principle that the law can be changed only by Parliament has been vindicated and this judgment will bring a lot of certainty not only in similar transactions but as a broad principle that authorities cannot try to interpret settled legal provisions to suit themselves and hope for the courts to bless such arbitrariness."

Sachit Jolly, Head, Direct Tax, Vaish Associates

"One of the most significant issues which the Supreme Court has clarified is that section 195 of the IT Act, 1961 does not apply to a non-resident having no presence in India. This should come as a major reprieve for all foreign companies who have or may be in the

process of acquiring interest in Indian companies because they would not have to withhold tax from payments made to the seller. The other important issue which the Supreme Court has clarified is that in order to attract capital gains tax in India, the asset sought to be transferred should be situate in India. In other words, transfer of assets situate outside India, which have the cascading effect of transfer of business in India cannot be taxed in India.”

Grant Thornton's, Client Service Director- Tax & Regulatory, Nitesh Mehta

“This is a significant ruling which brings a sigh of relief for the taxpayers facing similar issues. Further, it would provide impetus to the cross border merger and acquisitions. This ruling was also be closely watched by other countries having similar issues and it could pave way for finalization of tax treatment there as well. Having said that, we need to look at the up-coming budget to see if the Government introduces any amendments to negate the impact of this decision.”

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