

Cong agrees retro tax a disaster, but won't settle

The fact that the government is back to precisely where it was around two years ago—with Vodafone serving an arbitration notice on it against the 2012 retrospective tax—speaks volumes for the knots it has tied itself in. When he returned to the finance ministry in August 2012, P Chidambaram told investors he would resolve the problem soon; and if there was any confusion over what he meant, the Congress party's recent election manifesto explicitly says there will be no retrospective taxation and that a clear policy will be put in place for tax treatment of foreign firms and M&A transactions. In which case, why did the conciliation talks with Vodafone fail? Thanks to another retrospective amendment, this too in 2012, the taxman was empowered to tax, among several others, Vodafone India Services Pvt Limited (VISPL) for share transfers to a Vodafone company in Mauritius and added R3,434 crore to its income for FY10. Since both transactions related to Vodafone's purchase of Hutch's India operations, all the company wanted was that the cases be clubbed. Yet, the finance ministry refused to do this—the second case, it said, was before a tax tribunal. But if the attempt was to conciliate, surely the second case could also be clubbed? Since its verdict was going to be subject to a conciliation award, the tribunal could easily have been requested to give its verdict quickly.

It is not just Vodafone, the reason why there are few checks on the rash of similar large demands by the taxman is that, the way things are, the government is in the thrall of the taxman. Call it the fear of reprimand by the CVC or the CAG, or simply a public interest litigation, once the taxman has put out an order, few in the ministry wish to challenge it on merits. Indeed, once the Parathasarathi Shome Committee had come out with its recommendations—don't do retrospective taxation, but if you really have to, just levy the tax, not the penalty or interest payments—it should have been easy to settle the case. It is also possible that Vodafone may have agreed to pay the basic tax of R7,990 crore and moved on instead of having a R20,000 crore claim hanging over it. Which is why, if the next government wants to settle the Vodafone matter, as well as various others—especially if it is a BJP one and wishes to curb 'tax terrorism'—it needs to come up with a workable solution to the problem. One such could be to have an independent committee that vets tax demands above a certain value for their rationale as well as economic content. This would ensure, for example, that a Microsoft never got a tax notice asking it to add back part of its global profits to its Indian operations—if 5% of Microsoft's global R&D workforce was in India, 5% of global profits that were attributable to R&D were to be added back. It is equally important to put in a conciliation framework into the tax laws—a critical lacunae at the moment.