

AG takes the right decision on Vodafone

Given how the retrospective tax amendment, among other high-decibel tax cases, vitiated the country's investment climate, the NDA was expected to do away with the retrospective amendment as soon as it came to power. The problem, however, was that this would open it up to charges of cronyism, more so when the CAG or some other body argued that this ensured the taxman would not be able to collect tens of thousands of crore rupees of taxes. Which is why finance minister Arun Jaitley attempted a neat separation—let the existing cases be dealt with by the courts/arbitrators while a committee would ensure there was no more frivolous use of retrospective clauses. While that sounded a reasonable thing to do, the question was whether investors could trust the government—after all, if a Supreme Court verdict could be overturned by a retrospective amendment, what was to stop the taxman from appealing the case? And if the statute remained on the books, it could be abused at a later date, couldn't it? It is true that, in the last six months since the government has been in power, there has been no high-decibel tax case; it is also true the government has not created fresh hurdles in the way of, for instance, Vodafone Plc's arbitration. Indeed, earlier this month, the direct taxes board put out a circular advising taxmen not to go for "high-pitched assessments without proper basis" and said "senior officers have been directed to ensure that appeals are filed only on the merits thereof and not merely on the tax effect involved". In other words, if the taxman wins just 12% of cases in the Supreme Court and around a fifth in tribunals and high courts, don't go around appealing each case.

While all of this sounded good, investors remained wary. While old cases remained unresolved—between FY09 and FY14, transfer pricing adjustments added to R2.17 lakh crore—would fresh FDI being brought in be subject to tax? In the Vodafone India case—this is distinct from the Vodafone Plc case which involved Plc taking over Hutch's India operations—while shares were issued to Plc, the taxman said the valuations were too low and so slapped a transfer pricing tax on this. Ditto for Shell and around 25 others. This is what the Bombay High Court ruled on—while the taxman had used a retrospective amendment in this case as well, the Court's essential ruling was that FDI being brought in was in the nature of a capital transaction and so could not be taxed. The question of whether the price at which companies issued shares to their parents was correctly valued did not even enter the equation, the Court ruled. Under normal circumstances, the ruling would have been appealed; indeed, the taxmen in Mumbai have asked for this. Yet the Attorney General has opined it should not. Chances are the finance minister will go by his opinion, giving investors the first solid proof that his tax administration is going to be non-adversarial.

