

TAXING DRAMA: THE HINDU EDITORIAL ON RETROACTIVE TAX DISPUTES

Relevant for: Indian Economy | Topic: Issues relating to Growth & Development - Public Finance, Taxation & Black Money incl. Government Budgeting

In what should be the last act of a long and winding tax dispute drama, British firm Cairn Energy has said it has concluded all steps prescribed by the Indian government in order to be eligible for the refund of a contentious retroactive tax levy. The firm, now rechristened as Capricorn Energy, expects to get back 7,900 crore. Cairn Energy was the second major firm pursued by the I-T Department for taxes it believed had accrued in the past, using retro-active legislative changes introduced in the 2012 Budget by then Finance Minister Pranab Mukherjee. The original target for this move, that has sharply dented India's credibility, was Vodafone, which had secured a Supreme Court verdict against the tax department's demands for past transactions. Empowered to dig up similar transactions, involving the indirect transfer of assets situated in India, the I-T Department had, since 2014, pursued Cairn over a group restructuring undertaken in 2006, culminating in a tax demand of as much as 24,500 crore. Cairn and Vodafone had initiated arbitration proceedings against the Indian tax authorities' actions, and won in late 2020. But in Cairn's case, the taxman had recovered part of its 'dues' by forcibly selling its shares even as arbitration proceedings were pending — an action that led to The Hague awarding it penal damages of \$1.2 billion.

As part of the Government's compromise formula worked out belatedly last August through amendments in the tax law, Cairn had to drop all legal proceedings seeking to enforce the arbitration award against India, forgo the damages and indemnify the Government against all future claims or liabilities. Last month, Vodafone also availed these provisions. The Government should, on its part, work swiftly to process their paperwork and preferably remit their dues before the financial year concludes. While this will be a necessary first step towards restoring some of the damage caused to Brand India, it may not be immediately sufficient — from labelling it as tax terrorism while in the Opposition, this government dithered on corrective action till its eighth year in office. Even in the eight months following the loss of the Cairn arbitration, it shuffled its feet, from denial and obfuscation to working out legal amendments to fix the mess. The only ostensible trigger for the change was global courts approving seizure of Indian assets as Cairn sought to enforce the arbitration award. Whether this was an outcome of bureaucratic bravado, official obstinacy, political paralysis or a combination of all three, India needs to abandon such fickleness and demonstrate greater certainty and predictability across economic policy, be it about GST or global trade engagement, in order to bolster its credentials as an ideal investment destination.

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