

AFP: Britain warns India tax plan may hurt investment

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By Ben Sheppard (AFP) – 9 hours ago

NEW DELHI — British finance minister George Osborne on Monday criticised an Indian plan to retroactively tax business deals, saying it could damage foreign investment in the fast-developing country.

A proposal to allow Indian authorities to make retroactive tax claims is widely seen as targeting British mobile phone giant Vodafone, which has been battling the New Delhi government over alleged unpaid taxes.

The company in January won a Supreme Court case against the government's bid to tax the firm over its \$10.7-billion takeover in 2007 of Hong Kong-based Hutchison Whampoa's Indian unit.

But Finance Minister Pranab Mukherjee then announced a move to bypass the court ruling, adding to growing wariness among foreign investors about putting their money in Asia's third largest economy.

"We are concerned about the proposed budget measure," Osborne said after talks in New Delhi. "Not just because of its impact on one company, Vodafone, but because we think it might damage the overall climate for investment in India."

"I was quite candid about that with my Indian counterpart," he told reporters. "What India needs, like all countries, is a stable and predictable tax system to encourage investment."

New Delhi's planned change to the Income Tax Act would be retroactive to 1962 and would oblige domestic and foreign firms to pay tax on any overseas transaction involving an Indian asset.

Osborne's visit coincided with seven global industry bodies, ranging from the United States to Japan, saying the tax threat was "prompting a widespread reconsideration of the costs and benefits of investing in India."

In a joint letter to Prime Minister Manmohan Singh, they said the "unprecedented" proposal "had undermined confidence in the government's policies on foreign investment." Some multinationals had already begun re-assessing their investments in the country due to mounting uncertainty over taxation, the letter said.

The proposal, announced in last month's budget, "called into question the very rule of law, due process, and fair treatment in India," it added.

Signatories to the letter include the Confederation of British Industry, the United States Council for International Business and the Japan Foreign Trade Council.

"India will lose significant ground as a destination for international investment if it fails to align itself with policy and practice around the world and restore confidence in the relevance of the judiciary," the groups said.

Vodafone said last week it was urgently looking at ways to head off a potential fresh tax demand for \$2.2 billion and slammed the government's latest plans as "grossly unjust".

Indian tax officials contend Vodafone should have withheld the amount the seller, Hutchison, would have owed in capital gains tax when it sold the Indian mobile unit, which now has nearly 150 million subscribers.

Vodafone successfully argued in court that the deal was exempt from any tax because it took place abroad and both buyer and seller were foreign.

It also noted it was the purchaser and had made no gain on the acquisition.

As well as Vodafone, transactions by companies such as SAB Miller and Kraft could be affected by the proposal.

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Foreign business groups warn India that retroactive tax plan will hurt investment

By Associated Press, Updated: Monday, April 2, 8:52 AM

MUMBAI, India — Industry groups representing 250,000 companies across North America, Asia and the U.K. have warned India's prime minister that a proposed retroactive tax plan is causing foreign businesses to reconsider investing in India.

The warning, delivered in a March 29 letter to Prime Minister Manmohan Singh and other top officials, comes as India struggles to plug a worrisome fiscal deficit and revive investment amid slowing economic growth.

The groups that sent the letter, including the U.S.-based Business Roundtable, the Confederation of British Industry and the Japan Foreign Trade Council, object to a proposal tucked quietly into India's latest budget which would make the overseas transfer of Indian assets taxable, retroactive to 1962.

Billions of dollars are at stake.

"The sudden and unprecedented move in the bill has undermined confidence in the policies of the government of India toward foreign investment and taxation and has called into question the very rule of law, due process, and fair treatment in India," the letter says. "This is now prompting a widespread reconsideration of the costs and benefits of investing in India."

Visiting British finance minister George Osborne added his voice to the chorus of complaint Monday. "We should have a tax system in India that encourages investment, that is predictable," he told India's CNBC-TV18. Osborne met his Indian counterpart on Monday.

The new law would make transactions like Vodafone's \$11 billion acquisition in 2007 of the Indian telecom assets of Hong Kong's Hutchison Telecommunications taxable.

In January, India's Supreme Court ruled in favor of Vodafone, saying the British telecom giant is not liable for up to \$4.4 billion in back taxes and penalties on that deal. Many saw the budget proposal as an attempt to counteract the Supreme Court's ruling.

GE, SAB Miller, Cadbury, AT&T, Sanofi and Vedanta are among the companies fighting tax cases in India that could be affected by the changes.

Vodafone on Friday called the proposed changes "grossly unjust," saying they "raise important constitutional questions for India as well as widespread and profound concerns in the minds of international

investors.”

The letter reflects frustration among both foreign and domestic investors with India’s ruling Congress party, whose tenure has been marred by corruption scandals and policy flip-flops.

India’s decision on Friday to suspend environmental clearances for South Korean steel giant Posco’s \$12 billion steel plant — one of the largest foreign investments in India’s history — further damaged investor sentiment. Posco has been trying to build the plant since 2005.

Despite a shifting regulatory environment, India’s relatively fast growth continues to seduce investors.

The board of Goldman Sachs met in India for the first time last week at a tightly guarded suite at Mumbai’s Taj Mahal hotel before heading to the capital, New Delhi, to meet with Prime Minister Singh.

“This trip reinforced the enormous potential of India and we remain committed to helping our clients grow both inside and outside India,” chief executive Lloyd Blankfein said in a statement Sunday.

Gunjan Bagla, managing director of Amritt Inc., a Los Angeles consulting company that helps U.S. companies set up in India, said he tells his clients that it won’t be easy, but it may prove profitable.

“If you do business in the U.S. you are lucky to have 2 to 4 percent growth,” he said. “If you want to grow revenue 5 to 10 percent you have no choice but to look at a market like India. You have to take India as it is.”

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FINANCIAL TIMES

Osborne backs Vodafone on India tax

April 2, 2012 3:12 pm by Neil Munshi



George Osborne, the UK's finance minister, has added his voice to the chorus warning that India's plans for retrospective taxation of deals like Vodafone's 2007 purchase of Hutchinson Essar will hurt investment sentiment towards the country.

"We are concerned about the proposed budget measure, not just because of its impact on one company, Vodafone, but because we think it might damage the overall climate for investment in India," Osborne told the FT, speaking at the British High Commission in New Delhi.

Osborne's comments follow a letter sent over the weekend by seven business associations from the US, the UK, Canada, Japan and Hong Kong, to Indian prime minister Manmohan Singh warning him against endorsing retroactive tax rules.

The associations said some companies had already begun to re-evaluate their investments and others could follow suit in "a widespread reconsideration of the costs and benefits of investing in India".

India's plans to amend laws relating to taxation of overseas acquisitions of domestic assets, which risks reopening a \$2.9bn tax dispute settled earlier this year with Vodafone, has drawn harsh criticism from foreign investors already beleaguered by the country's unpredictable regulation.

While Osborne's words are likely to put further pressure on the government, his position will not go unchallenged. CNBC anchor Shereen Bhan, in an interview with Osborne, asked the chancellor whether there might be double standards at play.

She accused the UK government of applying its own retrospective rule change on Barclays, closing down schemes designed to avoid more than £500m in taxes.

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2 April 2012 Last updated at 04:01 ET

Global firms 'may rethink India' over tax proposal

Seven international trade associations have written to Indian Prime Minister Manmohan Singh criticising a new tax proposal under which even 50-year-old corporate deals could be scrutinised.

The proposals were announced as part of India's federal budget last month.

The associations warned that the firms they represent could reconsider their business ventures in India.

The government has been involved in a long-running fight over taxes with the London-listed Vodafone group.

In January, the Supreme Court ruled that Vodafone was not liable for taxes and penalties of up to \$4.4bn (£2.8bn).

The case centred on Vodafone's \$11bn acquisition of the Indian assets of China's Hutchison Telecommunications in 2007.

The company was presented with a tax demand of 112 billion rupees, currently worth \$2.2bn. The Indian government subsequently sought penalties of up to 100% of the original bill.

Vodafone said it did not owe tax on the deal, as the assets were held by a firm based in the Cayman Islands.

'Unprecedented move'

The letter to Prime Minister Singh was signed by seven leading industry associations from the US, UK, Japan, Canada and Hong Kong.

The list of associations comprises Canadian Manufacturers and Exporters, the Capital Markets Tax Committee of Asia, the Confederation of British Industry, the Japan Foreign Trade Council, the National Foreign Trade Council and the United States Council for International Business.

Together they represent more than 250,000 companies, including several top global corporations.

"The sudden and unprecedented move in the Bill [Indian budget] has undermined confidence in the policies of the government of India toward foreign investment and taxation and has called into question the very rule of law, due process, and fair treatment in India," the letter said.

"This is now prompting a widespread reconsideration of the costs and benefits of investing in India," it said.

The letter said some member companies had "already begun re-evaluating their investments in India due to increasing levels of controversy and uncertainty regarding taxation in recent years".

"India will lose significant ground as a destination for international investment if it fails to align itself with policy and practice around the world," it added.

Analysts say sluggish investment is to blame for the slowing growth of India's economy - the country registered 6.1% growth in the December quarter, the lowest in nearly three years.

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A long-running tax struggle between London-listed Vodafone Group Plc, India's largest overseas investor, and the Indian government has come to symbolise the perils to foreign investors in the country.

Vodafone won a five-year legal battle in January when India's Supreme Court dismissed a \$2.2 billion tax demand from authorities over the British company's acquisition of Hutchison Whampoa Ltd's Indian mobile assets in 2007.

That ruling was hailed by business groups as a victory for clarity in the country's investment climate, which has suffered due to policy paralysis, regulatory uncertainty and widespread corruption allegations against the government.

But the proposal in the recent budget to retroactively impose tax on deals conducted overseas where the underlying asset is located in India would amend 50-year-old-tax laws and allow New Delhi to pursue tax on long-concluded transactions.

"What India needs, like all countries, is a stable and predictable tax system to encourage investments, and we have concerns that this budget proposal would not add to that," Osborne said, adding he had raised his concern with Mukherjee.

Parliament is expected to consider the proposals during the last week of April.

"Some of our member companies had already begun re-evaluating their investments in India due to increasing levels of controversy and uncertainty regarding taxation in recent years," the letter said.

Foreign direct investment (FDI) in India stood at \$35.3 billion in the first nine months of the 2011-12 fiscal year, powered by two multi-billion-dollar energy deals, more than the \$32.9 billion registered in the 12 months to March 2011, according to data from the Reserve Bank of India.

India needs increasing FDI and foreign institutional inflows to offset a rising trade deficit, which is likely to have hit \$175 to \$180 billion in the year that ended in March.

'GROSSLY UNJUST'

Vodafone said last week it was considering a number of actions after the proposal, which it said was "grossly unjust".

Policy confusion in India's telecom sector over the tainted allocation of mobile licenses in 2008 recently saw Abu Dhabi's Etisalat announce the winding down of its Indian operations.

Norway's Telenor has also been embroiled in a dispute with its Indian partner, Unitech Ltd, and has said it would seek to migrate the business to a fresh venture with a new partner.

The tax proposal, if written into law, could also affect Kraft Foods Inc's 2010 acquisition of Cadbury's Indian business and deals involving Indian assets sold by AT&T Inc and SABMiller Plc's purchase of Fosters.

In the letter, the business groups said a plan to expand the definition of "royalty" retrospectively to 1976 would affect companies such as Ericsson.

"India will lose significant ground as a destination for international investment if it fails to align itself with policy and practice around the world," the letter said.

(Additional reporting by [Rajesh Kumar Singh](#) in NEW DELHI; Editing by [Tony Munroe](#) and [Raju Gopalakrishnan](#))

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Global trade bodies back Vodafone in tax case

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NEW DELHI: Leading trade bodies representing more than 250,000 companies across US, Europe and Asia have warned India that finance minister Pranab Mukherjee's Budget proposal to retrospectively tax overseas transactions involving local assets could hurt foreign investment inflows.

In a joint representation to Prime Minister Manmohan Singh, finance minister and other senior cabinet ministers, at least seven trade lobbies said member companies have begun re-evaluating their investments in India "due to increasing levels of controversy and uncertainty regarding taxation in recent years".

These trade lobbies include the United States Council for International Business, [Capital Markets Tax Committee of Asia](#), [Confederation of British Industry](#), Business Roundtable and Japan Foreign Trade Council.

"The sudden and unprecedented move in the Finance Bill has undermined confidence in the policies of the [Indian government](#) towards foreign investment and taxation and has called into question the very rule of law, due process and fair treatment in India," these groups said. "This is now prompting a widespread reconsideration of the costs and benefits of investing in India."

The Budget proposal to retrospectively tax transactions involving transfer of Indian assets between two foreign entities is widely seen as targeting Vodafone's \$11 billion purchase of Hutchison Essar.

In January, [Vodafone](#) won a four-year legal battle when the Supreme Court ruled that it does not have to pay Rs 12,000 crore in taxes because the transaction took place between two overseas firms and there was no provision in Indian laws to tax such deals.

The income tax department had raised the claim on Vodafone's 2007 acquisition of a nearly 67% stake in Indian mobile operator Hutchison Essar from Hong Kong-based Hutchison Telecom for \$11.2 billion.

Last month, the Supreme Court declined to entertain the authorities' plea to reconsider its January ruling, and the government has subsequently refunded with interest an amount of Rs 2,500 crore deposited by Vodafone in November 2010.

But the proposed legislation, if passed by Parliament, could potentially overturn the court ruling. This will impact companies, such as AT&T and GE, which have carried out transactions in which a significant part of the assets are in India.

"The Indian tax authorities' disregard for the judiciary is particularly striking when compared with the practice of other countries, which respect their court decisions and the principle of res judicata," they said.

"India will lose significant ground as a destination for international investment if it fails to align itself with policy and practice around the world and restore confidence in the relevance of the judiciary," the lobbies added.



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[Gaurav Choudhury](#), Hindustan Times

New Delhi, April 01, 2012

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Global investors rethink on India

Multi-national corporations are learnt to be re-evaluating their investments in India following the budget announcement that empowers taxmen to scrutinise even 50-year-old corporate deals, leading international trade bodies have said in a strongly worded letter to the UPA government.

Seven leading industry associations from the US, UK, Japan, Hong Kong and Canada cautioned in the letter to Prime Minister Manmohan Singh that “India will lose significant ground as a destination for international investment if it fails to align itself with policy and practice around the world and restore confidence in the relevance of the judiciary.”

The associations — Business Roundtable, Canadian Manufacturers and Exporters, Capital Markets Tax Committee of Asia, Confederation of British Industry, Japan Foreign Trade Council Inc, National Foreign Trade Council Inc and the United States Council for International Business — together represent more than 250,000 companies as members including top global corporations.

“Some of our member companies had already begun re-evaluating their investments in India due to increasing levels of controversy and uncertainty regarding taxation in recent years,” said the letter written on Friday, which has also been sent to finance minister Pranab Mukherjee, commerce and industry minister Anand Sharma and law minister Salman Khurshid.

Finance Bill 2012, once voted into law by Parliament, will empower authorities to tax companies for acquiring assets in India even if the deal is concluded overseas, retrospectively from April 1, 1962.

“The sudden and unprecedented move in the bill has undermined confidence in the policies of the government of India toward foreign investment and taxation and has called into question the very rule of law, due process, and fair treatment in India,” the letter said.

The letter came days ahead of the visit of George Osborne, UK’s chancellor of exchequer, who will be in India on Monday. Osborne, who will be accompanied by a high-powered business delegation, will likely raise the matter with finance minister Pranab Mukherjee.

The government’s decision to introduce a retrospective provision in the Income Tax Act is a direct fallout of the recent Supreme Court judgment which ruled that British telecom giant Vodafone wasn’t liable to pay

\$2 billion (Rs 11,200 crore) in taxes for a transaction that it inked in 2007 to acquire majority stake in mobile phone operator Hutchison Essar.

The government has maintained that there is no question of reopening old cases. In exceptional cases, where any case has escaped attention of the tax administration, transactions that were made within the past six years may be reopened.

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THE TIMES OF INDIA

Global Inc edgy over Vodafone tax

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NEW DELHI: Seven industry groups,

representing 2.5 lakh companies from the US, Britain, Canada, Japan and south-east Asia, have written to the Indian government saying that several of their members have begun reviewing their [investments](#) in India due to the proposed retrospective [amendments](#) to the [tax laws](#).

"If enacted, these proposals will significantly alter the Indian taxation of our member companies, with retroactive effect extending back for as much as half a century, and reverse many decided cases. Some of our member companies had already begun reevaluating their investments in India due to increasing levels of controversy and uncertainty regarding taxation in recent years. The sudden and unprecedented move in the Bill has undermined confidence in the policies of the Government of India toward foreign investment and taxation and has called into question the very rule of law, due process, and fair treatment in India. This is now prompting a widespread reconsideration of the costs and benefits of investing in India," the industry bodies said in a joint letter addressed to Prime Minister [Manmohan Singh](#).

In the [Finance Bill](#), the government had proposed to allow Indian authorities to tax any merger and acquisition transaction by a foreign firm that has interest in a company or an asset in India. The amendment, though applicable to transactions that took place in the last six years, will have retrospective applicability starting April, 1962.

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The move came after a setback for government in the Supreme Court in the Rs 11,000-crore tax dispute with Vodafone. Reports from London indicated that the telecom giant may initiate arbitration against the Indian government if the law was enacted, although [Vodafone](#) was unavailable for comment.

In their letter, the industry bodies make a mention of the Vodafone case, while pointing out to another retrospective amendment which will alter the definition of 'royalty'. This move, which will be applicable from 1976, is expected to adversely impact the telecom, IT and broadcasting sectors and comes in the backdrop of several court orders which did not favour the tax authorities.

"If tax law changes are made, they should not apply retrospectively. Past court decisions must stand despite subsequent legislation," the industry bodies said. Of the seven entities - Business Roundtable, Canadian Manufacturers & Exporters, Capital Markets Tax Committee of Asia, Confederation of British Industry (CBI), Japan Foreign Trade Council, National Foreign Trade Council, US Council for International Business - Vodafone is a member of CBI.

"The proposals also create serious uncertainty about whether India intends to take unilateral action to upset the balance of its existing treaty obligations, as they authorize the Central Board of Direct Taxation to define many terms used in tax treaties, with effect from the date on which each treaty entered into force," it added.

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