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SUPREME COURT SETS HONOURABLE PRECEDENT WITH VODAFONE RULING

Date: 24th January, 2012

The article speaks about supreme court's verdict on Vodafone tax issue. The court's decision brings a great sense of transparency and stability to the Indian industry. The decision would make corporate planning more accurate, as companies could now have a fair idea of their tax costs. This article is authored by Mr. Shailesh Haribhakti, Chairman, BDO.

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Guest Column

SHAILESH HARIBHAKTI

letters@hindustantimes.com

FROM SEPTEMBER 2007, when a tax notice was first issued to Vodafone, to January 2012, when the Supreme Court pronounced its verdict, the Vodafone case has been by far controversy's favourite child! While the Apex Court decision has given Vodafone a reason to cheer by stating that a transaction of transfer of shares of a foreign company between two non-residents is not taxable in India, it has also propounded the Indian judiciary's views on such tax debates, with key takeaways.

The Vodafone decision brings a great sense of transparency and stability to the Indian industry. Tax costs are always an integral factor, if not the sole factor, in a strategic business decision. This decision would make corporate planning more accurate, as companies could now have a fair idea of their tax costs, and tax costs will not be determined by creative interpretation of the law by tax authorities.

The key takeaway from this judgment is the emphasis of the Supreme Court to provide clarity to the foreign investor at the time of entry into India. In fact, the court has specifically held that the tax law in India, as it stands today, does not provide for such transactions to be taxed in India and accordingly no withholding taxes are attracted. The court has stated that if the tax department wishes to tax such transactions, they should specifically provide for such legislation after considering the impact on foreign investments. Without a specific provision, there is no necessity to lift the corporate veil in case of legitimate transactions.

It can only be hoped that the tax authorities respects this landmark ruling and don't attempt to override it with retrospective legislation.

This landmark decision re-emphasises the time-honoured principle that taxpayers are entitled to plan their economic affairs within the framework of law and legitimate transaction structures cannot be disregarded merely because of the tax benefits arising out of them.

This decision is being welcomed with open arms by the global business community which has used similar off-shore holding structures, and has provided tremendous certainty to investors.

The author is chairman of BDO India, a unit of BDO — a worldwide network of public accounting firms

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