

# Budget 2016: Contentious tax issues, opportunity for Cairn, Vodafone

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Written by [Khushboo Narayan](#) | Mumbai | Published: March 1, 2016 3:05 am



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The government on Monday offered a one-time settlement to foreign investors to settle long pending tax disputes. This offer announced by the finance minister [Arun Jaitley](#) in the Union Budget may help companies such as Vodafone Group Plc and Cairn Energy Plc to settle contentious tax issues arising out of retrospective amendments that have been pending for over three years.

“I propose a one-time scheme of dispute resolution for them,” said Jaitley on Monday. “...they can settle the case by paying only the tax arrears in which case liability of the interest and penalty shall be waived,” he added.

According to media reports, Economic Affairs Secretary Shaktikanta Das subsequently said the comments were directed toward Vodafone and Cairn, even though Jaitley didn’t identify them by name.

The government has claimed that Vodafone and Cairn owe Rs 21000 crore and Rs 20494 crore respectively in taxes, including interest and penalty. However, if Vodafone and Cairn indeed settle the case under the latest government scheme they will have to pay only the original tax demand of about Rs 8000 crore and Rs 10247 crore respectively.

The one time settlement offered by the government requires the company to “withdraw any pending case lying in any court or tribunal or any proceeding for arbitration, mediation etc. under BIPA (bilateral investment protection treaty)”.

“It’s a good move considering that they (government) have not recovered a penny till now in such cases. Some companies may pay up and buy peace to avoid long term litigation costs. The move is in line with the P Shome committee recommendations,” said Amit Maheshwari, partner, Ashok Maheshwary & Associates.

Vodafone has initiated international arbitration proceedings under BIPA against the government claim of initiated international arbitration proceedings under the bilateral investment treaty taxes as capital gains levy for its purchase of Hutchison assets in February 2007.

The government claims that Vodafone should have deducted capital gains tax when it made the USD 11 billion payment to Hutchison while purchasing its India assets. This argument was quashed by the Supreme Court in February 2011 but the then government introduced retrospective tax in that year's budget prompting Vodafone to challenge the validity of the claim. "We will of course study the detail of what the Finance Minister has proposed today, while continuing to seek resolution of this matter through international arbitration," said a spokesperson of Vodafone Group on.

"Vodafone has always maintained that there was no tax to pay at the time it completed its acquisition of Hutchison's business in 2007. This view was upheld unanimously by the Supreme Court of India in January 2012. Furthermore, Vodafone was the acquirer in this transaction. The company made no capital gain whatsoever. Given the clarity of the Indian law in force in 2007, there was no legal basis to withhold tax," the spokesperson added.

Cairn Energy too has initiated international arbitration under the India-UK bilateral investment protection agreement.

Jaitley on Monday once again reassured foreign investors that the government wants to provide a stable tax regime. He announced setting up a high level committee to "oversee any fresh case where the tax authority proposes to assess or reassess the income in respect of indirect transfers by applying the retrospective amendment". The committee will now be chaired by the Revenue Secretary and consist of chairman, CBDT (Central Board of Direct Taxes) and an expert from outside.