

Tax Hotline

December 03, 2008

THE VODAFONE TAX CONTROVERSY BOMBAY HIGH COURT DISMISSES VODAFONE PETITION*

The Hon'ble Bombay High Court has finally pronounced its verdict in what is one of the most intriguing tax controversies in recent times – the Vodafone Tax Controversy. The writ petition filed by Vodafone International Holdings BV (“**Vodafone**”) has been dismissed. Justice S. Radhakrishnan pronounced the Order and stated that there were about five grounds on which the writ petition had been dismissed. The judge however did not elaborate on what these grounds were and one will have to wait for the Order, which is yet to be signed by Justice A. V. Nigude, the other judge on the Division Bench that heard the case, to be published.

The Income Tax Authorities (“**Revenue**”) had served a show cause notice to Vodafone, contending that the latter was liable to deduct tax at source from the payment made to a Cayman Islands company for the acquisition of another Cayman Islands company, which indirectly holds shares in an Indian company. Through this show cause notice the Revenue had raised a tax demand of approximately US\$ 2.1 billion from Vodafone. It was this show cause notice, which was challenged by Vodafone in the said writ petition. The scope of the writ petition was further expanded to challenge the retrospective amendments made to Section 201 of the Income Tax Act, 2008 (“**ITA**”), pursuant to the Finance Act, 2008. Section 201 provides for penal consequences for the failure to withhold taxes.

While the writ petition has been dismissed, it appears that the controversy is far from settled. The stay on the Revenue for not proceeding against Vodafone, which was originally granted on October 31, 2007, has been extended by eight weeks, starting today. It is expected that Vodafone will appeal against today's order before the Supreme Court of India within this period.

As always, we shall attempt to bring you accurate updates and analysis of the Vodafone Controversy as it continues to unfold.

- **International Tax Team**

* We had published our daily commentaries on the Vodafone Controversy as it had unfolded in the courtroom. These commentaries can be accessed here: [June 27, 2008](#), [June 30, 2008](#) [July 2, 2008](#), [July 8, 2008](#), [July 9, 2008](#), [July 10, 2008](#)

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