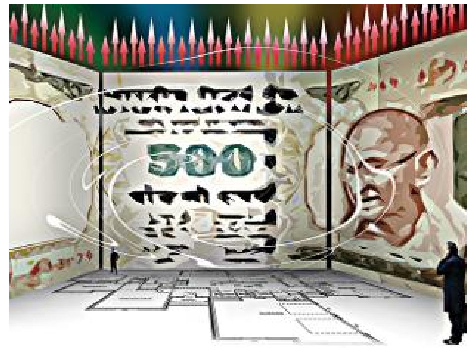
Income Tax officials to proceed with MAT levy on FPIs as CBDT provides no clarity

By *Sachin Dave*, ET Bureau | 25 Mar, 2015, 04.12AM IST

MUMBAI: The Income-tax officials have told the foreign portfolio investors (FPIs) to pay up Minimum Alternate Tax (MAT) by the end of the month which industry trackers say could amount to around Rs 50,000 crore. This comes after the I-T officials (ITOs) have not got any clarification on the issue from the statutory authorities or the government.



CBDT has not responded to I-T department's letter seeking clarity on the issue; experts feel demand around Rs 50,000 cr may be raised.

"The Income-tax department had written to the CBDT (Central Board of Direct Taxation) and sought clarification on MAT. But there is no clarification as yet, and MAT on FPIs' capital gains from the markets would be levied," a person close to the development said. The Income-tax department would start taking the submissions (submission on record) of FPIs on the issue from the first week of April, people close to the development said.

"CBDT is not replying, and this is a big task (of levying MAT) that we have to complete by the end of the month. We have to upload the order by the end of the month if there is no clarification, so as of now, many ITOs are going ahead and completing the work," an I-T official said. This is set to open a Pandora's Box and the Indian equity markets could suffer due to this development, say industry trackers.

"This (MAT on FPIs) is an unfortunate development and against the spirit of exempting FPIs from MAT. At least for this one, the government must amend the law retrospectively as the intention was never to charge MAT on FPIs," says Rajesh H Gandhi, Partner — tax, Deloitte Haskins & Sells. Industry trackers say FPIs would not be able to get the benefit of setting-off losses in the past years by carrying it forward, which may also impact the returns of foreign investors. And add to that the fact that the Income-tax department can dig up liabilities of around seven years ago, which they would be required to pay in the coming year, the FPIs now find themselves in a quandry.

Back of an envelope calculations by four tax experts ET spoke to concur that the demand raised under MAT could be anywhere around Rs 50,000 crore. "It is tricky and extremely tough to make these calculations as FPIs operate through different accounts to start with but I see that the Income-tax department would find it tough to even come up with a number," a tax expert opined.

Industry trackers say CBDT can still intervene before the end of this month. "CBDT should issue appropriate instructions to the I-T department that MAT ought not to apply to FPIs even for back years. Not doing this will mean that they are not taking the FM's announcement in spirit and that could lead to protracted litigation and dent in investor sentiments," said Sameer Gupta, partner — tax and regulatory services, Ernst & Young.

MAT Tangle for FPIs

Taxman to levy MAT on FPIs' capital gains from the markets

In the recent Budget, FM had announced to exempt FPIs from paying MAT on their capital gains

BUT I-T OFFICIALS CONTEST BUDGET PROVISIONS WILL COME INTO EFFECT ONLY FROM **April 1, 2015**

Govt hasn't clarified whether this law is retrospective or not

Hence, I-T officials will go ahead with MAT demands for FY12

They need to complete assessment by March-end

If MAT is applied, all FPIs will have to pay 20% MAT on their book profits

This way FPIs won't be able to get benefit of setting-off losses in the past years by carrying it forward

Move may impact the returns of foreign investors

MAT is levied on India-based manufacturing companies who maintain Indian balance sheets. Many tax experts interpret this in a way that FPIs cannot be taxed under MAT.

cannot be taxed under MAT. Also, currently taxes on short-term capital gains from equity and equitylinked product are 15% while longterm capital gains are not taxed. FPIs investing in India through Mauritius and Singapore claim tax benefits under the tax treaty with the island nation and do not pay any taxes on gains from the stock market.

However, if MAT is applied, all FPIs would have to pay 20% MAT on their book profits. And no one would get the treaty benefit. In the recent Union Budget, the government had announced to exempt capital gains from MAT.

However, soon afterwards the IT officials had told FPIs that nothing has changed as the budget provisions are only effective from April 1, 2015, and would not affect retrospectively.

Since the government has not clarified whether this law is retrospective or not, I-T officials are going ahead with MAT demands for fiscal 2011-12 as they need to complete the assessment by the end of this month.

"If tax authorities levy MAT in the assessment and assuming there is no clarification when the budget proposals are enacted, I feel it is likely that tax authorities will want to reopen the other past years as well. As we know, tax authorities can go back seven years and re-assess tax," added Gandhi.