Taxing Drama- The Retroactive Tax Disputes

What is the issue?

The Cairn Energy firm has said it has concluded all steps prescribed by the Indian government in order to be eligible for the refund of retroactive tax levy and is expecting to get back Rs. 7,900 crore.

What is a retrospective tax?

- A retrospective tax taxes a transaction that took place prior to the law being framed.
- It can be a new or additional charge on transactions done in the past.
- The retrospective tax provision was introduced in India by **Finance Act 2012**.
- It allowed the government to tax companies on mergers and acquisitions (M&As) that happened before 2012.
- In effect, it aimed to bring past indirect transfer of Indian assets under the ambit of taxation.

What cases challenged the provision of retrospective taxation?

- **Vodafone Case**- UK-based telecom giant Vodafone bought a 67% stake in Hong Kong-based Hutchison Whampoa for $11 billion.
- To this transaction, the Indian government raised a demand of Rs 7,990 crore in capital gain.
- It said the company should have deducted the tax at source before making a payment to Hutchison.
- The company took the matter to the Supreme Court.
- The Court ruled in favour of Vodafone saying that it could not be taxed retrospectively.
- To overcome the legal hurdle, the retrospective taxation law was introduced.
- With this, the I-T department slapped Rs 3,100 crore tax notice on Vodafone India.
- **Dispute with Cairn-** Cairn Energy was asked to pay 10,247 crore in 2014 because of its move to bring its assets under a single holding company undertaken in 2006.
- Cairn claimed that the government violated the India-UK Bilateral Investment Treaty (BIT).
- Cairn and Vodafone both moved to the **Permanent Court of Arbitration (PCA)**.

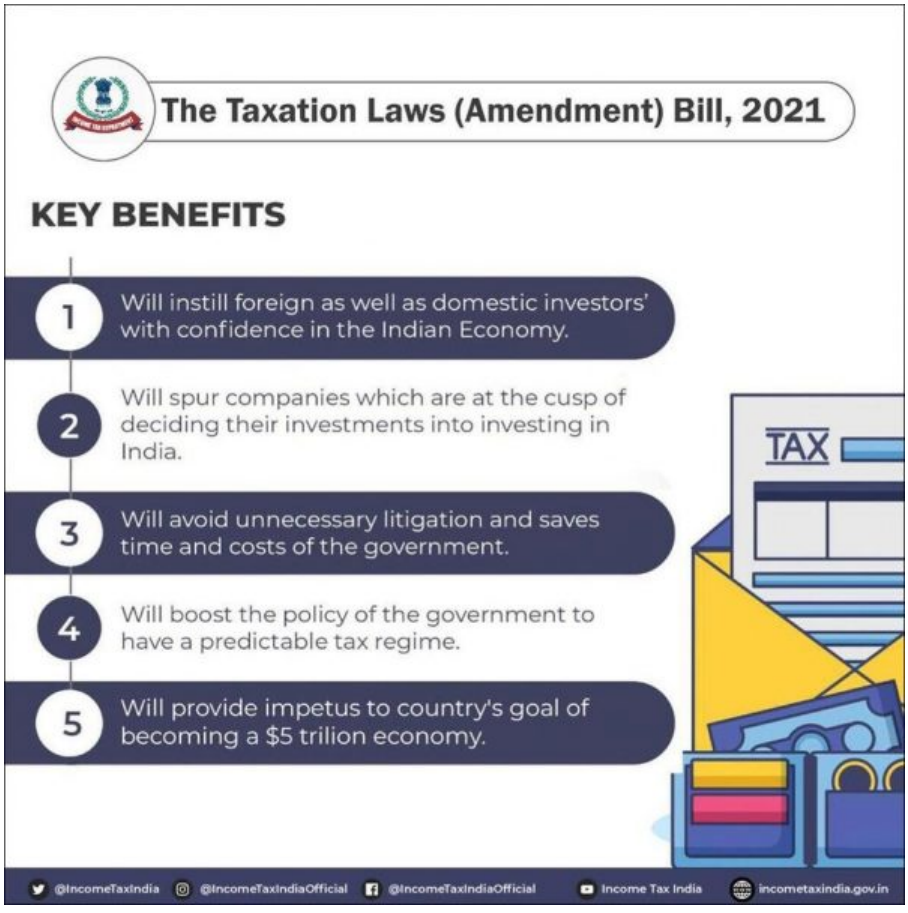
> *PCA was established in 1899 to facilitate arbitration and other forms of dispute resolution between states. Its headquarters is in Hague, Netherlands.*

What was the court’s ruling?

- The international court ruled in favour of Cairn.
- In Cairn’s case, the taxman had recovered part of its dues by forcibly selling its shares even as arbitration proceedings were pending.
- This action led to the international court awarding it penal damages of 1.2 billion dollars.

What happened aftermath the international court’s ruling?

- The government introduced the **Taxation Laws (Amendment) Bill** in 2021 to nullify the retrospective tax clauses introduced in 2012.
- As per the proposed changes, any tax demand made on transactions that took place before May 2012 shall be dropped.
- And any taxes already collected shall be repaid without interest.
- To be eligible, the concerned taxpayers would have to drop all pending cases against the government.
- They should also promise not to make any demands for damages or costs.
- Both the Cairn and Vodafone availed these provisions.



What must the government do now?

- The Government should work swiftly to process their paperwork and preferably remit their dues before the financial year concludes.
- This will be the first step towards restoring some of the damage caused to Brand India.
- India needs to abandon volatility in laws and policies and demonstrate greater certainty and predictability across economic policy to bolster its credentials as an ideal investment

destination.

Reference

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