PRESS INFORMATION BUREAU
GOVERNMENT OF INDIA
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CLARIFICATION ON VODAFONE TAX ISSUE

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A news report has appeared in the Financial Express, Delhi edition, 27th April, 2012 captioned "I-T didn't warn Vodafone of tax burden or dispute deal format". In this regard, the Central Board of Direct Taxes (CBDT) has issued the following clarification:-

In this connection, it may be noted that the first notice in the transaction relating to sale of 66.9848% stake of Hutchison Essar Ltd. (HEL) was issued on 15th March, 2007 under section 133(6) of the Income-tax Act, by the Additional Director of Income Tax (International Taxation), Mumbai to HEL in which it was asked to submit certain details regarding the transaction including shareholders agreements and memorandum of understanding between Hutchison Telecommunications International Ltd. and Vodafone Group dated 11th February, 2007. In the said notice, it has been clearly mentioned that as per information available (from Press Releases of the parties concerned), Vodafone International Holdings BV proposes to acquire the entire issued share capital of CGP Investments (Holdings) Ltd., a company incorporated in Cayman Islands indirectly from HTIL and the full details of the transaction was sought.

When the Indian company showed its inability to submit the details, another notice was issued on 23rd March, 2007 in which, after quoting the Press releases from HTIL and Vodafone, it was mentioned that HTIL/Hutchison Group had made substantial gains from their investment in HEL. It was clearly mentioned that the capital gains are chargeable to tax in India. It was further mentioned that if in case, parties to the transaction proposes to advance any other view, they are at liberty to approach the Assessing Officer. It was explained that the payer (Vodafone Group) as well as the payee (Hutchison Telecom Group) can make an application to the Assessing Officer under sections 195(2) and 197 of the Income-tax Act, 1961, respectively for determining the exact tax liability resulting from the above-mentioned transaction.

This advisory of the tax department was conveyed to the parties concerned, that is, to Vodafone Group and to HTIL. This has been confirmed by HEL in writing through their letter dated 5th April, 2007. It has been mentioned by HEL in the said letter that "we have provided copies of this letter to the concerned parties" and that

this has been done solely on the request of the tax department and without assuming any responsibility or liability whatsoever for any actions and transactions of the two non-resident entities.

HEL had its principal office at Mumbai but was assessed to tax at Chandigarh. The Assessing Officer at Chandigarh, on 28th March, 2007, had written two letters to HEL, one of which was addressed to Vodafone UK in which attention of provisions of section 195 was drawn. Replies to the two letters were provided on 1st April, 2007 in which it has been stated that the letter addressed to Vodafone UK is being returned. These correspondences had no relationship with the enquiry conducted at International Taxation Directorate, Mumbai, which had the jurisdiction over the said transaction.

The facts stated as above indicate that while the communication sent by Chandigarh tax office was not served on Vodafone UK and thus has no relevance, the notice sent by Mumbai International Taxation Directorate was confirmed by HEL, India, to have been served on both HTIL and Vodafone.

Thus, Vodafone cannot say that it had received no communication from the tax department, about the chargeability of the transaction to tax in India. Further, it chose to ignore the advice, received before the conclusion of the transaction, that Vodafone or HTIL should approach the Assessing Officer under sections 195/197 of the Income-tax Act, 1961, for determining the exact tax liability in India.

It is clarified that the above communications are part of the Court records and are thus in the public domain.

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