Indian tax tribunal stays Vodafone transfer pricing demand

(Please note that this article is from an independent third-party tax news provider and the views expressed do not necessarily reflect those of Deloitte).

A spokesman for UK telecom giant Vodafone said on 27 December 2013 that an Indian income tax appellate tribunal has stayed the collection of an INR 37 billion (about $597 million) transfer pricing assessment related to an alleged undervaluation of shares for tax year 2008-2009.

"Vodafone can confirm that the Income Tax Appellate Tribunal (ITAT) has granted a stay of execution of the transfer pricing order which Vodafone received in December 2011," the spokesman told *Tax Analysts* via e-mail. "Vodafone maintains that there is no tax payable on this transaction and will continue to strongly defend its position against this order."

The demand, which the Indian Revenue Department finalised on 18 December 2013, covers unpaid taxes and interest and is connected to a transfer of shares from the company's Indian arm, Vodafone India Services Pvt. Ltd., to a Mauritius-based intermediary holding company. Vodafone contends that the transaction does not fall under Indian transfer pricing rules, but the Indian tax authorities argue that the shares were grossly undervalued and that the differential amount constitutes a loan to the Mauritius holding company. (For prior coverage, see Vodafone receives finalised Indian transfer pricing demand re alleged share undervaluation.)

Vodafone India received a draft transfer pricing order in December 2011 that would have added INR 85 billion (about $1.37 billion) to the business income that the company reported for tax year 2007-2008. The company filed an objection with the tax dispute resolution panel in January 2012, then filed a writ petition at the Bombay High Court in February 2012.

The court dismissed the writ petition in September 2013 and remanded the case to the dispute resolution panel, ordering the Revenue Department to delay finalising the transfer pricing assessment until 17 December.

Although the Vodafone spokesman did not elaborate on the details of the ITAT's decision, the order reportedly is effective for six months or until the final disposal of the case, whichever comes first. Vodafone will have to pay an INR 2 billion deposit and produce bank guarantees for the remaining contested amount.

According to the ITAT website, the stay was granted on 23 December and the case was adjourned until 2 January 2014.