Rewind to fast forward

Delayed reset on retrospective tax is only the first step to regaining investor confidence

A tortuous taxation tale that began with global telecom major Vodafone's $11 billion entry into India, is nearing its climax 14 years on, with the company having frozen fresh investments for a few years and its Indian operations now on the brink of collapse. On Thursday, Finance Minister Nirmala Sitharaman introduced tax law changes to scrap the retrospective provisions brought in by the late Pranab Mukherjee in the Union Budget 2012-13. I-T demands have been made in 17 cases, including from Vodafone and Cairn, using those retro-active clauses in the I-T law. That this government took so long to undo Mr. Mukherjee's gambit after losing a tax pursuit against Vodafone is disappointing. Even before 2014, the BJP had called the retrospective provisions 'tax terrorism'. Yet, it did not walk the talk despite a resounding parliamentary majority, while promising global investors that it does not approve of such measures. Whether this was a result of political dithering, bureaucratic bungling or ill-informed legal advice, the 'sore point for potential investors' remained on the statute. This should now lead to a formal burial of a matter that has cost India dear.

In Cairn's case, the tax department began action in January 2014, but the assessment orders were passed, and its shares sold off to recover 'retrospective' tax dues under this regime's watch, pending international arbitration. By December 2020, the Vodafone and Cairn arbitration cases had been lost and investors hoped the Government would abide by the legal process and close this sordid chapter. Instead, appeals were filed, with the Government asserting as recently as May that it will 'vigorously defend' its sovereign right to tax and had 'never agreed to arbitrate a national tax dispute'. On Friday, Ms. Sitharaman said the Government was waiting for those cases to 'reach their logical conclusion'; now that they have, the BJP is fulfilling its commitment that it does not believe in retrospective taxation. If that were indeed the case, the Government could have introduced these changes in the Budget instead of wasting more legal resources on filing appeals. It is quite clear the U-turn has been prompted by Cairn Energy's relentless pursuit to enforce the arbitration award. That it has sought to get Air India labelled as the Government's 'alter ego', creating fresh doubts for the airline's potential buyers, and a French court has permitted it to freeze Indian assets in Paris, must be significant triggers. Whether Cairn will back down from those claims or forfeit the interest and damages, as offered by the Government to close the chapter, will likely depend on its institutional shareholders. Irrespective of the outcome, global capital is unlikely to immediately forget the 'ad-hoc' approach to this critical policy issue and rush in. Be it fluctuating trade tariffs or shifting GST rates and rules, India needs to demonstrate greater clarity and consistency in policy across the board to fix its broken credibility.