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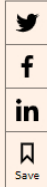


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India moves to scrap retrospective tax

New Delhi seeks to repair reputation as investment destination by abolishing levy



Narendra Modi's government introduced a bill in parliament to rescind a 2012 tax code provision that had allowed New Delhi to impose retrospective taxes on some foreign investments © Bloomberg

Amy Kazmin and Stephanie Findlay in New Delhi AUGUST 5 2021

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India took a big step towards repairing its damaged image as an investment destination by moving to scrap a retrospective tax that ensnared multinationals such as Cairn Energy and Vodafone.

Prime Minister Narendra Modi's government on Thursday introduced a bill in parliament to rescind a 2012 tax code provision that had allowed New Delhi to impose retrospective taxes on some foreign investments.

The controversial order, pushed through parliament after New Delhi lost a \$2.9bn [tax battle](#) with Vodafone in India's Supreme Court in 2012, had severely damaged the country's reputation as an attractive place to do business.

FitchRatings

Global Minimum Tax Raises Prospects for Multinational Tax Hikes

The Group of Seven (G7) countries' backing of a global minimum tax of at least 15% highlights widespread interest among major developed market governments in raising taxes for multinational companies, says Fitch Ratings. Globalization, a trend toward digitalization, US President Joseph Biden's aversion to digital service taxes on US technology firms and efforts to shore up public finances as the world recovers from the coronavirus pandemic underscore the agreement. Tax rates are not typically a key rating driver for Fitch-rated issuers and near-term cash flow implications are unlikely

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“We think this is an important time for India to be welcoming of investment,” TV Somanathan, India’s finance secretary, told a local television channel after the bill was tabled. “We are very keen to basically get the economy on a faster growth path.”

The move comes as India’s economy reels from the impact of the Covid-19 pandemic, with gross domestic product growth [contracting](#) 7.3 per cent last year. Even before the virus hit, the economy was in the doldrums, with GDP growth slowing for eight consecutive quarters.

New Delhi’s image has suffered in recent months from its high-profile [international tax battle](#) with Cairn Energy over the Scottish energy company’s 2006 corporate restructuring before it listed its Indian operations on the Bombay Stock Exchange.

In December, an international arbitration tribunal [ordered New Delhi to pay](#) Cairn \$1.7bn as compensation for its seizure and sale of a 10 per cent stake in Cairn India against the disputed tax.

New Delhi refused to honour the award, and Cairn last month secured an order from a French court [freezing](#) Indian-government owned properties in Paris as a step towards collecting on its debt.

Cairn also filed a lawsuit in a US court seeking to seize aeroplanes of state-owned carrier, Air India, in lieu of payment. It also said it had identified more than \$70bn worth of other Indian government assets abroad that could stand in for compensation.

Amending the Indian tax code, which will allow a tax refund to Cairn, though without interest, will allow New Delhi to claim it had settled the dispute under Indian law, rather than appear to comply with an international arbitration ruling whose jurisdiction it long contested.

“Those cases that predated the 2012 amendment are now going to be let off the hook, but we are doing this under Indian law,” Somanathan said.

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India threatens Walmart-owned Flipkart with big fine

“There is a principle at stake here — it’s being done through Indian statute. We continue to assert that we have the right to tax but we are choosing to do this. We are not accepting those arbitral awards. We have an objection to such disputes getting adjudicated outside India.”

Cairn said it had “noted” the proposed legislation and was “monitoring the situation”. Shares in the company soared as much as 47 per cent before easing slightly to close at 160p a share, up 27.4 per cent on the day.

Tax experts welcomed the move but questioned why India’s ruling Bharatiya Janata party waited so long. The BJP had fiercely criticised the retrospective tax law when the previous Congress party government pushed it through in 2012 and had described it as “tax terrorism”.

“It should have been done a while ago, it’s absolutely the right decision and it sends the right signal to investors,” said Nigam Nugehalli, registrar at the National Law School of India University in Bangalore.



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“I’m sure that the immediate prod for them was the fact that they lost their arbitration cases against Vodafone and Cairn,” said Nuggehalli, “any more intransigence on this would really result in loss of face for [the government].”

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— **Kingswells** 4 DAYS AGO

It is sad FT news is covering only one side of the storey and corporate tax manipulation and tax heavens are not criticised. No countries can afford to lose the tax revenues, but when it comes to developing countries why this double standards when Videophone acquired Indian assets through tax heavens? However, US and UK tax authorities chase Amazon and Google for their fare share of taxes.

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— **Man about Town** 4 DAYS AGO (Edited)

TV Somanathan's comments about disputed being settled in India are a joke given that Vodafone won its case in the Indian Supreme Court back in 2012 and yet the Government still refused to honour that judgement. Cairn still need to press for interest payments - they are \$500m! Seize the aircraft until India pays up in full. India still hasn't fully learnt its lesson- it's still content to be a banana republic.

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— **Buckbeak** 4 DAYS AGO

A key fact here is that the Congress party that currently sits in the opposition had passed the retrospective tax law in 2012 that the Modi government just scrapped. This article gives an incorrect impression of the Modi government doing a 'volte-face'.

It is interesting why Ms. Kasmin's articles show a continuous trend of omitting key facts in favour of the Congress party. The FT readers would prefer someone more objective.

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— **Lotus30** 4 DAYS AGO

In reply to **Buckbeak**

Cheers for **levelling-up** this article.

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— **Textex** 4 DAYS AGO

Nothing like a prod in the back side, to get the country to think clearly. This was something instigated by the Congress Party (any wonder they are defunct now) but validated by the arrogant BJP until state assets were under threat. Another lesson - push back hard against megalomaniacs.

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— **Mr Happy** 4 DAYS AGO

Little more than gesture politics, we need the interest on the the stolen money as well otherwise it is still little more than outright theft. Even if they do refund Cairn's money it came too late for the likes of my father a small Cairn shareholder and who passed on in the midst of all this.

Still in the UK we had all those false promises from the UK government about Sirius which they reneged on and left small shareholders deeply out of pocket. Governments are pretty much the same all over the world.

When a country commits theft like this a little retrospective tinkering with the law is not going to restore credibility because there is no trust left. India played fast and lose with western companies in many sectors of its economy and it will pay the price for a long time to come. I know one giant company I had worked for redirected its investment decisions in the light of India's unpredictable governments, I am sure there are many more that followed suit. So now India's politicians are concerned about their expansive Chinese neighbour they will have to work much harder to restore faith with the west.

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— **Miks** 4 DAYS AGO

Took a long time but good decision finally....

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— **Hedge Sales** 4 DAYS AGO

I could not come up with a worse communication. Here was a chance to welcome foreign capital instead they amend the law and then attach a threat that they will not accept international arbitration. What can I say ? Bureaucrats ? Morons ? Or both ?

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— **Admiral Vernon** 4 DAYS AGO

↩ In reply to **Hedge Sales**

corrupt?

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— **Hedge Sales** 4 DAYS AGO

↩ In reply to **Admiral Vernon**

Haha - Yes ! How could I forget the holy trinity ?

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— **ecofinview** 4 DAYS AGO

Why do the foreign companies continue to be so ignorant and stoopid?

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— **Boris Zohnson** 4 DAYS AGO

↩ In reply to **ecofinview**

Doing business in the developing world involves risk. Who knew?

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— **Barry13** 4 DAYS AGO

Fantastic confidence building step - this is the Modi Government we hoped for 🍌🍌🍌 This one step will return the exchequer quantum returns long term.

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— **une** 4 DAYS AGO

Ms. Kazmin could have shown her facade of neutrality by mentioning at the beginning that the mess was created by the leftist Congress government. But she chooses to sell everything as a BJP problem to the gullible FT readers.

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— **NxM** 4 DAYS AGO

↩ In reply to **une**

BJP has been in power 7 years now? And the action against Cairn etc is on their watch?

I don't see how anyone can still hold the Congress Party responsible for this after 7 years of being out of power.

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— **Boris Zohnson** 4 DAYS AGO

↩ In reply to **une**

Didn't read to the end?

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— **mohit.satyanand** 4 DAYS AGO

↩ In reply to **une**

And it took BJP 7 years to figure out what was right?
Hilarious.

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— **Blueinnice** 4 DAYS AGO

A billionaire I worked for said that he invests in India rather than China. Because it is a democracy. And as a democracy, he saw a better long term future investing in India. However, he said, they do keep shooting themselves in the foot.

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— **cs** 4 DAYS AGO

↩ In reply to **Blueinnice**

Your billionaire will certainly become a millionaire, if he invests in India! For democracy to have any credibility you first need equality. India society is governed by the cast system, not all men are equal.

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— **NxM** 4 DAYS AGO

↩ In reply to **Blueinnice**

Does he pay well? We're all available for career change 😊

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— **cs** 4 DAYS AGO

This is just the result of diplomatic pressure by heads of state from several countries for over two years in respect of one specific law. As for the rest, India was, is and remains un-investable. India will lure foreign companies with the vague promise of great profits and access to market of billions and after the foreign companies establish presence in India, then India will hit them with exorbitant fines, penalties, taxes. It's the parasitic mindset of India way of doing business and the deep belief that foreign companies need to pay India money. Remember that in India beggars have taken their trade to another level, a sort of the "amazon-of-beggars" is an India business, completely online with grueling images to cause a feeling of guilt to the well-off.

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— **Miks** 4 DAYS AGO

↩ In reply to **cs**

Been repeat binge watching slumdog millionaire?

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— **Boris Johnson** 4 DAYS AGO

↩ In reply to **cs**

The seizure of Indian state assets around the world to satisfy the arbitral award also might have had something to do with it.

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— **Sam** 4 DAYS AGO

".....rather than appear to comply with an international arbitration ruling whose jurisdiction it has long contested...."

Treaties become applicable when the Parliament of a given country recognizes it. India has not accepted all treaties.

Ditto is the position of many developed nations (USA, UK, Europe etc.) against various international treaties. Otherwise they don't hold any water in accordance with the agreed international law practices.

Countries like Britain which doesn't have a contract law enacted by its parliament (Its judges make up the contract law as they go - totally illegal as per international law), **any company registered in Britain cannot be recognized by other countries which have proper contract laws.**

Why the French or US judge is even hearing this case is mystifying? As per International law UK is null and void and hence any of its laws cannot be recognized beyond the boundaries of UK.

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— **ArchitHEC** 4 DAYS AGO

↩ In reply to **Sam**

The arbitration is being done under the 1994 Bilateral Investment Treaty between Republic of India and United Kingdom (India - UK BIT) which allows for arbitration in case of dispute under international law. The treaty was only terminated in 2017 and hence the Cairn had a legal recourse to dispute the Indian law

— Sam 4 DAYS AGO

↳ In reply to ArchiHEC

India has never accepted the interpretation from the UK legal team. This is not 18th century when Empire was at its zenith. Lawyers are enjoying the fee. Cairn should have pursued it in Indian courts.

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— PyroclasticJoe 4 DAYS AGO

↳ In reply to Sam

They did! Cairn took their case all the way to the Indian Supreme Court and won on the law as it then stood, but the Indian government then cynically decided to ignore the Supreme Court judgment, and enact retroactive legislation instead, to try and justify the retroactive tax demand. So that's why Cairn and the UK government resorted to the investment treaty when the Indian government showed its utter contempt towards judgments of the Indian courts.

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— NxM 4 DAYS AGO

↳ In reply to Sam

Contract Law in the UK is based on statute (laws enacted by Parliament), tort and case law.

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— Sam 4 DAYS AGO

↳ In reply to NxM

You need to read the law. There is no such thing as contract law in UK, as in many other countries.

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— Boris Johnson 4 DAYS AGO

↳ In reply to Sam

There is nothing "illegal" about common law. It just isn't Napoleonic.

In any case, there is a codified Companies Act in the UK. Here's the current version: <https://www.legislation.gov.uk/ukpga/2006/46/contents>

You sound like one of those FMOTL nutters...

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— Sam 3 DAYS AGO

↳ In reply to Boris Johnson

Companies Act doesn't cover contract law. Don't just comment - do read up about the law - UK has been winging it.

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— Sam 4 DAYS AGO

"India moves to scrap retrospective tax....."

A very common sense move by the government of the day.

If one looks a bit deeper, one will find that Indian bureaucrat like the Whitehall Babus have a habit of shooting themselves in the foot.

Most politicians wouldn't have understood what the bureaucrats were asking them to sign in 2012. On his last day as the Finance Minister of India, before standing for presidential election and winning it, Mr. Pranab Mukherjee (ex Finance Minister and Ex President of India) initiated the retrospective tax action.

The current government, being politicians first, let the thing run its course through the courts and each day it harmed Congress legacy for the long term. Master stroke.

With the repealing of the law, the foreign investor will get the money minus the inflation and minus interest.

Lesson learnt for the Indian politicians and political parties is that they need to hire external / independent experts - not retired ex-bureaucrats - to advise them on the policy matters.

As the Indian economy grows, economic performance will take center stage and this means the politicians will have have to learn the nous of policy making and the international law.

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— Boris Johnson 4 DAYS AGO

↳ In reply to Sam

The foreign creditors will simply press on with the enforcement of their awards until every last Rupee owed has been paid. India choosing to pay part of what they owe will not change the legal basis upon which these actions rest. I'm afraid there will be no escape for India from the rule of law.

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My 2 cents 4 DAYS AGO

Too little, too late
Also the statue in the background does not resemble the Father of Nation - MKG

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arshjay 4 DAYS AGO

Well done, a move in the right direction! Go India...

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General Lannes 4 DAYS AGO

This is a fairly useless development! India is now damaged goods and most investors will stay away format least a generation!

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Enlightenment 4 DAYS AGO

Foreign companies have now learnt what makes Indian Govt pay up.

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mohit.satyanand 4 DAYS AGO

In reply to Enlightenment

Precisely.
GOI has kept flying the flag of national prestige, and refusal to abide by international rulings, till the confiscation of assets became real, in Paris.

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alfien 4 DAYS AGO

Modi could have rectified the injustice once he was in government years ago. But he chose to ignore the retrospective tax. The world cannot be fooled by the late reversal of corrupt ways to enhance its coffers. SHAME on Modi. Cairn should claim interest and loss of earnings too.

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LondonTechGuru 4 DAYS AGO

Why on earth would Cairn settle for \$1.2bn when there is a route to securing the full arbitration award of \$1.6bn+?. The \$400m delta was equivalent to Cairn's EV this morning!!! Do your long suffering shareholders a favour and dont let this rotten state off the hook. 6 years to get here. Will wait another 6yrs.

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London55 4 DAYS AGO

In reply to LondonTechGuru

You need to read your comments again

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