Retrospective Tax Amendment

Why in news?

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- The Income Tax authorities slapped Rs. 30,700 crore penalty on Cairn Energy, the erstwhile U.K. parent of India's largest private sector crude oil producer, Cairn India.
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- The tax authorities are persisting with their demands of collecting retrospective taxes from Vodafone PLC and the U.K.'s Cairn Energy.
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What are the cases about?

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- **Vodafone case -** CGP Investments (Holdings) Limited is a Cayman Islands-registered company, which owned the Indian assets of Hutchison Essar.
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- Vodafone International Holdings B.V., a Dutch company, acquired 67% of an Indian company, Hutchinson Essar Limited, by buying 100% stake in CGP.
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- **Cairn case -** The assets held by Cairn India Holdings had to be transferred to a company registered in India, which was done by Cairn India (an Indian entity) buying the entire stake in Cairn India Holdings from Cairn U.K. Holdings.
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- Both the cases involve a transfer of ownership of an Indian entity by way of an overseas transaction involving parties which did not fall under Indian tax jurisdiction.
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- In both cases, the tax authorities argued that though the deal was between two overseas entities, the shares derived their value from assets held in India, and hence were liable for capital gains tax.
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- The Supreme Court struck down the demand in the Vodafone case.

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- The government then retrospectively amended the law to allow indirect transfers which derive substantial value from assets located in India to be subjected to tax.
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What are the problems?

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- The amendment was used to nullify a judgment of the Supreme Court and undermines the Court's authority.
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- The issue is not just that the tax authorities are persisting with their efforts to collect the money.
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- The issue is why the retrospective amendment is being allowed to continue in the statute books.
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- It is against the government's determination to root out "tax terrorism", and undermines 'Make in India' initiative.
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- Changing the rules, after having started doing business discourages business environment and potential investments.
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Source: The Hindu

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