

Impact of a SC Order on Telcos' Licence Fee Tax

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What's in Today's Article?

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Why in News?

- The Supreme Court of India has held that payment of entry fee as well as variable annual licence fee made by telcos will be considered capital expenditure and not revenue expenditure and taxed accordingly.
- In a blow to telecom companies in the country, the decision could bring in additional tax liabilities (~\$1 billion in the current fiscal year) for them – especially for older telcos Bharti Airtel and Vodafone Idea.

What did the Supreme Court Rule?

- Disposing an appeal by the Income Tax Department, a Division Bench of the SC held that –
 - The payment of entry fee as well as the variable annual licence fee paid by the respondents-assesses to the DoT (Department of Telecommunication) under the (New Telecom) Policy of 1999 are capital in nature, and
 - May be amortised in accordance with Section 35ABB of the (Income Tax) Act.
- This essentially means that instead of deducting the entire expenditure all at once, the company will need to deduct a portion of the total fee over each year for tax purposes.
- As part of its judgement, the top court also set aside a Delhi HC order that categorised licence fees before and after July 31, 1999, differently, as capital expense and revenue expense, respectively.
 - As per the National Telecom Policy 1999, telecom operators had to pay a one-time licence fee to start operations, along with a yearly licence fee based on their annual turnover.
 - This was in contrast to the earlier policy, wherein they had to pay licence fee in one go.
 - The SC noted that the migration to the 1999 telecom policy (from 1994 policy) and variable nature of payments, does not change the licence fee's essence.

How will the Order Impact Telcos?

- Currently, telecom companies treat licence fees as an expense, claiming deductions on account of variable licence fees on a year-to-date basis for computing their tax liability.
- After the judgement, the licence fee would have to be treated as a capital expense, with a provision for amortisation of the licence fee over the licence period.
- Prima facie, the accounting change would lead to higher EBITDA/PBT and lower cashflow on higher tax outgo initially, but would likely even out over the licence holding period.
 - EBITDA is an acronym for Earnings Before Interest, Taxes, Depreciation, and Amortisation. PBT stands for Profit Before Tax.
 - They usually show how the net profit of the company stands reduced due to the impact of Interest, Depreciation, and Tax.

Concerns Regarding the SC Order:

- The various telecom operators who have incurred substantial expenses to obtain a licence will have to revisit the position taken with respect to the deductibility of the expense.
 - The disallowance of the expenses would adversely impact the companies which are already suffering a huge loss.
 - The SC's order has not clarified whether the changes to the accounting structure will have to be made on a retrospective basis.
 - According to the Kotak report, the income tax authorities are expected to raise demand for the shortfall in tax payment for the prior period, along with applicable penalties.
 - Telecom companies are likely to file a review petition and the actual tax liability could get delayed.
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Q1) What is the National Telecom Policy 2012?

National Telecom Policy 2012 aims to ensure accelerated equitable and inclusive economic growth, with a focus on providing affordable and high-quality telecommunication services in rural and remote areas.

Q2) What is the Telecom Regulatory Authority of India (TRAI)?

The TRAI is a statutory body set up by the Government of India under the Telecom Regulatory Authority of India Act 1997. It is the regulator of the telecommunications sector in India.

Source: [Why a Supreme Court order on telcos' licence fee tax has the industry worried](#)

Source: <https://vajiramandravi.com/current-affairs/telcos-licence-fee-tax/>

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