Walmart-Flipkart deal to face scrutiny from income tax dept

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The Walmart-Flipkart deal will face fresh scrutiny from the income tax department. Even before Walmart's acquisition of 77 per cent stake in Flipkart became official on Wednesday, the income tax department had sent a communication to the company, apprising them about the Sections of the Income-tax Act that would apply on the transaction.

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Also, the tax department has asked the company to contact them in case they need any further clarification about the applicability of Indian taxation laws on the deal. "The idea was to inform them so that they do not say that they were not aware," the official said. A similar letter was also sent to the India office of US-based Walmart. The tax department has mentioned the applicability of Section 9 (1) and Section 195 in its communication to the companies. Withholding tax and capital gains tax would apply on the deal between Walmart and Flipkart, the official said.

As per Section 9 (1) of the Income-tax Act, incomes shall be deemed to accrue or arise in India if they are "accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India". As per Section 195, any person responsible for paying to a foreign company, "any interest (not being interest referred to in section 194LB or section 194LC) or section 194LD or any other sum chargeable under the provisions of this Act not being income chargeable under the head "Salaries") shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force."

Last month, Flipkart had received a breather on the tax front after the Income Tax Appellate Tribunal (ITAT) rejected the tax department's tax demand of Rs 110 crore from the company for financial year 2015-16. The company had claimed tax deductions on its marketing and discount expenses by classifying them as revenue expenditure, a claim which was upheld by the ITAT. The tribunal had accepted Flipkart's application that it needed to spend on discounts and marketing every year to retain market share and such revenue expenditure could be legitimately deducted. In December 2017, the Income Tax Department had claimed that the expenses made by Flipkart were capital in nature, which have to be spread over a longer term of 4-10 years and for which deductions are not permissible under the Act.

In a transaction of similar nature in 2007, Vodafone International Holdings BV forayed into the Indian mobile phone market by buying 67 per cent stake in Hutchison Essar. Vodafone's subsidiary exchanged cash for shares with a similar holding company for Hutchison Essar, in

Cayman Islands. At the time, Indian tax authorities did not raise a tax demand as the deal was done offshore. But later the Section 9 (1) (i) of Income-tax Act was invoked by the tax department in 2010 demanding over Rs 11,000 crore on Vodafone International Holdings BV, on account of its $11-billion deal to acquire Hutchison Essar.

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