

STATEMENT OF THE FINANCE MINISTER

A number of countries have provided for General Anti Avoidance Rules (GAAR) in matters relating to taxation. While *tax mitigation* is recognized, *tax avoidance* is frowned upon. International literature describes tax avoidance as the legal exploitation of tax laws to one's own advantage and an arrangement entered into solely or primarily for the purpose of obtaining a tax advantage.

2. The principle of GAAR was incorporated in the Direct Taxes Code which was introduced as a Bill in Parliament on August 30, 2010.

3. Pending consideration of the Bill, the Income-tax Act, 1961 was amended by Finance Bill, 2012 to add Chapter X-A titled 'General Anti-Avoidance Rule'. It became part of the law when the Finance Bill was passed by Parliament. Draft GAAR guidelines were also published. Under the current provisions, Chapter X-A would come into force with effect from April 1, 2014.

4. A number of representations were received against the provisions contained in Chapter X-A. Hence, on July 13, 2012, the Prime Minister approved the constitution of an Expert Committee on GAAR to undertake stakeholder consultations and finalize the guidelines for GAAR. Accordingly, an Expert Committee consisting of Dr. Parthasarathi Shome and three others was constituted on July 17, 2012 with broad terms of reference including consultation with stakeholders and finalizing the GAAR guidelines and a roadmap for implementation.

5. The Expert Committee submitted its draft report on August 31, 2012 which was placed in the public domain on September 1, 2012. After examining the responses to the draft, the Expert Committee submitted its final report on September 30, 2012.

6. The Government has carefully considered the report of the Expert Committee.

7. The major recommendations of the Expert Committee have been accepted, with some modifications, and the following decisions have been taken by Government:

- (i) An arrangement, the **main purpose of which is to obtain a tax benefit**, would be considered as an impermissible avoidance arrangement. The current provision prescribing that it should be “the main purpose or one of the main purposes” will be amended accordingly.
- (ii) The assessing officer **will be required to issue a show cause notice, containing reasons**, to the assessee before invoking the provisions of Chapter X-A.
- (iii) The assessee shall have an **opportunity to prove** that the arrangement is not an impermissible avoidance arrangement.
- (iv) The two separate definitions in the current provisions, namely, ‘associated person’ and ‘connected person’ will be combined and **there will be only one inclusive provision defining a ‘connected person’**.
- (v) The **Approving Panel** shall consist of a Chairperson who is or has been a Judge of a High Court; one Member of the Indian Revenue Service not below the rank of Chief Commissioner of Income-tax; and one Member who shall be an academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practices. The current provision that the Approving Panel shall consist of not less than three members being Income-tax authorities or officers of the Indian Legal Service will be substituted.
- (vi) The Approving Panel **may have regard to** the period or time for which the arrangement had existed; the fact of payment of taxes by the assessee; and the fact that an exit route was provided by the arrangement. **Such factors may be relevant but not sufficient** to determine whether the arrangement is an impermissible avoidance arrangement.
- (vii) The **directions** issued by the Approving Panel **shall be binding on the assessee as well as the Income-tax**

authorities. The current provision that it shall be binding only on the Income-tax authorities will be modified accordingly.

- (viii) While determining whether an arrangement is an impermissible avoidance arrangement, it will be ensured that the **same income is not taxed twice** in the hands of the same tax payer in the same year or in different assessment years.
- (ix) **Investments made before August 30, 2010**, the date of introduction of the Direct Taxes Code, Bill, 2010, **will be grandfathered.**
- (x) **GAAR will not apply to such FIs that choose not to take any benefit under an agreement** under section 90 or section 90A of the Income-tax Act, 1961. GAAR will also **not apply to non-resident investors in FIs.**
- (xi) A **monetary threshold of Rs. 3 crore of tax benefit** in the arrangement will be provided in order to attract the provisions of GAAR.
- (xii) Where a part of the arrangement is an impermissible avoidance arrangement, GAAR will be **restricted to the tax consequence of that part** which is impermissible and not to the whole arrangement.
- (xiii) Where GAAR and SAAR are both in force, **only one of them will apply** to a given case, and guidelines will be made regarding the applicability of one or the other.
- (xiv) Statutory **forms will be prescribed** for the different authorities to exercise their powers under section 144BA.
- (xv) **Time limits will be provided** for action by the various authorities under GAAR.

- (xvi) Section 245N(a)(iv) that provides for an **advance ruling by the Authority for Advance Rulings (AAR)** whether an arrangement is an impermissible avoidance arrangement will be retained and the administration of the AAR will be strengthened.
- (xvii) The tax auditor will be **required to report any tax avoidance arrangement.**

8. Further, having considered all the circumstances and relevant factors, Government has also decided that the **provisions of Chapter X-A will come into force with effect from April 1, 2016** (as against the current provision of April 1, 2014).

9. The final report of the Expert Committee has been put on the website of the Ministry of Finance today.

Dated: January 14, 2013