

**GOVERNMENT OF INDIA
FINANCE
LOK SABHA**

UNSTARRED QUESTION NO:4042
ANSWERED ON:03.12.2010
CAPITAL GAINS TAX OF COMPANIES
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Will the Minister of FINANCE be pleased to state:

- (a) whether several foreign companies in India do not pay capital gains tax on their property and on profit earned by them;
- (b) the reaction of the Government in this regard for the last three years;
- (c) the loss of revenue being suffered by the Government due to non-payment of this tax; and
- (d) the reaction of the Government thereto?

Answer

MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI S. S. PALANIMANICKAM)

(a) to (d) Foreign companies are required to pay tax on capital gains arising to them on transfer of their assets as per the provisions of Income Tax Act and respective Double Taxation Avoidance Agreement (DTAA), unless specifically exempted by the applicable DTAA viz DTAA with Mauritius, Cyprus etc. However some companies have not paid tax based on their own interpretation of the Income Tax Act read with DTAA. The Income Tax Department has taken action in order to assess the unpaid tax liability in such cases. The loss of revenue on account of non-payment of tax can be quantified as and when these assessment orders are finalized.

In case where capital gain tax is not paid due to exemptions provided in the DTAA, accurate estimation of the value of alleged 'revenue loss' is difficult as the tax on capital gains depends on the difference between the sale and purchase price, factor of cost inflation index, cost of transfer, the set of loss suffered in one transaction against the gains in the other and the carried forward losses of earlier years. The exercise can be undertaken only if the returns of income containing all such relevant details are filed by every alienator of the asset. Since the tax on capital gains is exempt under the DTAA, a large number of alienators have not filed the return unless they have other streams of income. Accordingly no reliable estimate can be made of revenue loss.