

**GOVERNMENT OF INDIA
FINANCE
LOK SABHA**

STARRED QUESTION NO:184
ANSWERED ON:12.08.2011
EVASION OF TAX
Tewari Shri Manish

Will the Minister of FINANCE be pleased to state:

(a) whether Section 138 (1)

(b) of the Income Tax Act 1961 or any other provision of law is applicable to the information obtained by India from foreign countries under various Double Tax Avoidance Agreements (DTAA), Tax Information Exchange Agreements (TIEA), Letters of Rogatory and the Egmont Group of Financial Intelligence Units (FIUs);

(b) if so, the details thereof;

(c) the manner in which Section 138 of the Income Tax Act is applicable to the information obtained under DTAA, TIEA, Letters of Rogatory and FIUs especially with regard to tax evasion and evaders;

(d) whether it is a settled law that domestic law overrides International Agreement/Treaties in case of conflict between the provision of an International Agreement/Treaty and domestic laws; and

(e) if so, the reaction of the Government thereto?

Answer

MINISTER OF FINANCE SHRI PRANAB MUKHERJEE

(a) to (e): A statement is laid on the table of the House.

Statement referred to in reply to parts (a) to (e) of the Lok Sabha Starred Question No. 184 regarding 'Evasion of Tax', raised by Shri Manish Tewari, Hon'ble M.P, for answer on 12th August, 2011.

Part (a) to (c): Section 138 of the Income-tax Act, 1961 applies to all information received under the Income-tax Act. The provision also applies to information received under the Double Taxation Avoidance Agreement (DTAA) and the Tax Information Exchange Agreement (TIEA) subject to overriding effect of the specific DTAA/ TIEA under which the information has been received.

The information obtained by Financial Intelligence Unit-India (FIU-IND) from a foreign jurisdiction through the Egmont exchange framework of Financial Intelligence Units (FIUs) is governed by the 'Principle of Information Exchange' prescribed by the Egmont Group, which, inter alia, lays down that;

(i) The requesting FIU may not transfer information shared by a disclosing FIU to a third party, nor make use of the information in an administrative, investigative, prosecutorial, or judicial purpose without the prior consent of the FIU that disclosed the information.

(ii) All information exchanged by FIUs must be subjected to strict controls and safeguards to ensure that the information is used only in an authorized manner, consistent with national provisions on privacy and data protection. At a minimum, exchanged information must be treated as protected by the same confidentiality provisions as apply to similar information from domestic sources obtained by the receiving FIU.

FIU-IND is authorized under Section 66 of the Prevention of Money Laundering Act, 2002 to share information with 15 agencies, including the Central Board of Direct Taxes (CBDT); as notified by the Government of India from time to time. The intelligence received by FIU-IND from its foreign counterparts is shared with these authorized agencies with the prior consent of the disclosing FIU.

Part (d): Under Section 90 of the Income-tax Act 1961, the provisions of the Agreement (DTAA/TIEA) entered into under that Section, or the provisions of income-tax Act, 1961, whichever is more beneficial to taxpayer, shall apply. Hence, if the confidentiality provision of the Agreement entered into is more stringent, then that confidentiality provision, being more beneficial to the taxpayer, shall apply. Part (e) Does not arise.