GOVERNMENT OF INDIA
FINANCE
LOK SABHA

STARRED QUESTION NO:38
ANSWERED ON:23.11.2012
SHOME PANEL REPORT
Dhruvanarayana Shri R. ;Singh Shri Uday Pratap

Will the Minister of FINANCE be pleased to state:

(a) whether the Expert Committee chaired by Dr Parthasarathi Shome has submitted its report on General Anti-Avoidance Rule (GAAR) and retro-tax laws to the Government;

(b) if so, the details thereof along with the recommendations made by the Committee;

(c) if not, the reasons therefor and the time by which the said Committee is likely to submit its report; and

(d) the status of implementation of the recommendations made by the Committee?

Answer

FINANCE MINISTER (SHRI P CHIDAMBARAM)

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

Statement referred to in the reply to the Lok Sabha Starred Question No. 38 raised by Shri Uday Singh and Shri Dhruva Narayana, MPs, regarding the Shome Panel Report

(a) Yes Sir.

(b) The report on General Anti-Avoidance Rule (GAAR) was submitted to the Government on 30th September, 2012. The report on retrospective amendments in relation to indirect transfers was submitted on 31st October, 2012. The salient recommendations in both the reports are as under: -

A. Recommendations on General Anti Avoidance Rules

(i) The implementation of GAAR may be deferred by three years.

(ii) The tax on gains from transfer of securities which is subject to Securities Transaction Tax be abolished.

(iii) Only the arrangements which have the main purpose (and not one of the main purposes) of obtaining tax benefit be covered under GAAR.

(iv) The Approving Panel for GAAR should be headed by a retired judge of a High Court and include members from outside the Government.

(v) A monetary threshold of Rs.3 crore tax benefit in a year to the taxpayer be prescribed for application of GAAR.

(vi) GAAR provisions should not be applied to Foreign Institutional Investors (FIIs) who have not taken any benefit under a tax treaty. The provisions should also not be applicable to the non-resident investors in the FII.

B. Recommendations on retrospective amendments relating to indirect transfers

(i) The provisions relating to indirect transfers should be applied prospectively.

(ii) In case the provision are applied retrospectively, no action should be taken for treating any person as assessee in default for non-deduction of tax or as a representative assessee and no interest and penalty be levied.

(iii) A mechanism of conciliatory resolution of pending disputes be provided.

(iv) The provisions should not be applied to capital gains arising on transfer of shares of a foreign company, if such company is listed on a recognized overseas stock exchange; the transferor along with its associates holds less than 26% shares in the foreign company; the value of assets of the foreign company in India is less than 50% of its global assets; or the transfer relates to intra-group business reorganization.

(v) The provisions should not be applied to the non-resident investors in Foreign Institutional Investors.

(c) Does not arise in view of (a) above.

(d) The recommendations of the Committee are under active consideration of the Government.