

GAAR fear: Separate tax threshold likely for FIIIs

In an attempt to assuage apprehensions of tax payers regarding the proposed general anti-avoidance rules (GAAR), the government will put in place a threshold to ensure that tax payers and foreign investors don't attract the GAAR provisions. In fact, foreign institutional investors (FIIIs) will be provided a separate threshold for GAAR.

"We will have a threshold (for GAAR). The rules committee has been working on it. Our intention is that rules should be in place as soon as the finance bill is passed... The threshold will not be in terms of turnover, it will be in terms of quantum of tax," finance secretary RS Gujral told The Indian Express.

GAAR is a set of broad and general principles-based rules enacted in the Income Tax Act to counteract tax avoidance. Although the provisions related to GAAR were to be introduced with the implementation of proposed Direct Tax Code, finance minister Pranab Mukherjee brought the provisions in Budget 2012-13 to check tax avoidance by taxpayers and FIIIs who have been avoiding payment of tax seeking treaty benefit.

As proposed in the Bill, the anti-avoidance provisions state: "Notwithstanding anything contained in the Act, an arrangement entered into by an assessee may be declared to be an impermissible avoidance arrangement and the consequence in relation to tax arising therefrom may be determined subject to the provisions of GAAR."

However, soon after the Bill was tabled in Parliament, FIIIs, mainly from Mauritius, held several meetings with the finance ministry officials to raise concerns over the proposals.

Officials said apart from a general threshold, FIIIs will have a separate threshold in form of tax quantum payable to address their concerns too. In fact, the rules will also have examples explaining situations where GAAR would apply.

Ruling out any dilution of GAAR provisions, Gujral said that it already exists in over 30 countries. "we will however address the concerns raised by FIIIs," he said. The FIIIs had earlier said the wordings of the provision for substantial commercial presence leaves scope for discretion to assessing authorities. This may lead to harassment of tax payers, they maintained.

"They said it will be assumed that it does not have a substantial commercial presence if there is a part tax payment. That is not the purpose but if the wordings need to be amended in order to take care of this concern, we would do that," he said adding that several layers of safeguards have been provided for assessee to save them from harassment.

"As of now the burden of proving is on department. After collecting proofs the assessing officer will have to send it to commissioner. The commissioner will then look at all proofs and decide whether a notice needs to be sent to assessee. He will have to send it to a GAAR panel. If he decides GAAR is not invocable, the department has no appeal against that. If the panel decides against the case, department can't appeal. But assessee can appeal in the appellate tribunal. This is a huge safeguard," the secretary said.

Gujral said the government may provide for an "independent" in the GAAR panel to address the concern of FIIIs. Currently, it is proposed to have three people of rank of chief commissioner or commissioner in the panel.

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