Govt may defer GAAR by a year

The government is likely to defer implementation of the controversial GAAR provisions by one more year to April 2017 and exempt transactions made up to March 2013 in a bid to improve business sentiment.

The government earlier proposed imposing the General Anti-Avoidance Rules (GAAR) from April 1, 2016, for those claiming tax benefit of over Rs 3 crore. The rules are aimed at minimising tax avoidance for investments made by entities based in tax havens.

The Finance Ministry, which is preparing the budget for 2014-15, is considering deferring implementation of GAAR by one year with a view to improve business sentiment and promote investments and growth, official sources said.

As per the new proposal, investments made after March 2013 will be covered under GAAR with effect from assessment year 2017-18.

The sources said the benefits of grandfathering, or exemptions, would be made for business arrangements entered into up to March 2013 and not August 2010 as notified earlier.

As per the existing GAAR notification, investments made up to August 30, 2010, were not to be scrutinised.

"Tax department needs to work further on GAAR provisions and realign some of the regulations," a source said.

The current provisions apply only to foreign institutional investors (FIIs) that have claimed benefits under a Double Tax Avoidance Agreement (DTAA).

Investments made by a non-resident by way of offshore derivative instruments or P-Notes through FIIs will not be covered by the GAAR provisions.

The GAAR provisions were introduced in the 2012-13 Budget by then Finance Minister Pranab Mukherjee to check tax avoidance and were to have come into effect from April 1, 2014. The proposal generated controversy, with investors getting apprehensive about harassment by tax authorities.

To soothe the nerves of jittery investors, in January 2013 then Finance Minister P Chidambaram announced the postponement of the implementation of Chapter X-A of the I-T Act (dealing with GAAR) by two years to April 1, 2016.

As per the provision, a business arrangement can be termed 'impermissible' if its main purpose is to obtain tax benefit. Under the original GAAR proposals, the anti-tax avoidance provisions could be invoked "if one of the purposes" was to obtain tax benefit.

The assessing officer has to issue a show-cause notice, with reasons, to invoke GAAR provisions and also has to give an opportunity to an assessee to explain whether an arrangement was 'impermissible.'

The government's decision to amend the provisions was in response to fears by investors that the tax department, armed with discretionary powers, would crack the whip even in cases where tax avoidance was not the intent.

(Times of India)