

Don't invoke GAAR against investors from Mauritius, says Boolell



Commerce minister Anand Sharma with Mauritius foreign minister Arvin Boolell in New Delhi on Friday

fe Bureau

New Delhi, July 6: Mauritius said on Friday that India should not invoke the proposed General Anti-avoidance Rules (GAAR) on investors based in the island nation once the two countries build safeguards into their double taxation avoidance agreement (DTAA), preventing shell companies in Mauritius from evading capital gains tax on their investments in India.

Mauritius foreign affairs and international trade minister Arvin Boolell said here, "Once the 'limitation of benefit' clause is embedded in the taxation treaties, we expect it to prevail and no domestic legislation should override the treaty."

"Article 13 of the DTAA (related to capital gains tax) is sacrosanct," Boolell said, indicating his country's unwillingness to let India tax Mauritius-based entities for capital gains here.

Limitation of benefit (LoB) is an anti-abuse provision that disallows tax exemptions to shell companies set up merely to use provisions of the double taxation treaty. Under it, a company has to incur a minimum annual expenditure in operations so as to qualify for the treaty benefit. The clause will remove uncertainty as any foreign institutional investor (FI) based in Mauritius would not have to pay tax in India if it incurs the minimum expenditure. Currently, the India-Singapore treaty includes the LoB clause.

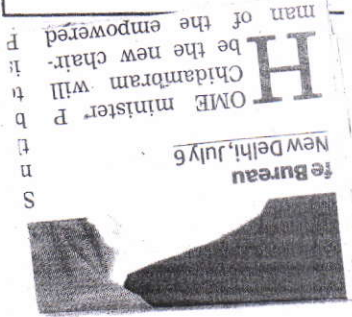
India recently announced the draft GAAR, as per which it will prevail over all bilateral tax treaties including the India-Mauritius treaty. Also, GAAR, which is based on the substance over form doctrine, guards against arrangements sans commercial rationale made for the sole purpose of "aggressive tax planning".

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sion for the incorporation of the LoB.

India suspects that many India companies are routing funds through Mauritius to evade tax, which is known as round-tripping. He said Mauritius has done everything to curb round-tripping and is willing to further cooperate within the framework of international laws and standards on the issue of round-tripping.

GAAR is slated to come into effect from April next fiscal, although after Prime Minister Manmohan Singh's statement that foreign investors' concerns over India's tax laws will be allayed, there is now renewed hope that it could be deferred further.

Boolell, who met India's commerce minister Anand Sharma later in the day, said the two countries would hasten the preferential trade agreement negotiations with focus on agri-processing, manufacturing, drugs and pharmaceuticals, medical equipment, seafood, automobile parts, tourism and hospitality, and information technology and IT-enabled services.

The visiting Mauritian minister also met the Prime Minister and external affairs minister SM Krishna on Thursday and discussed various issues including revision of DTAA and implications of GAAR on FIIs.

On sharing of banking information between the two countries, Boolell said, "Mauritius has been forthcoming to disclose certain privileged information." Referring to

in seven days. Boolell said his country has shared information related to over 170 cases with India over three years.

Nearly 40% of the foreign direct investments into the country came through Mauritius between April 2000 and February 2012. The FDI inflows from Mauritius have been \$64.80 billion, or 37.64% of the total FDI inflows from the country.

Don't invoke...

If an FII claims the benefit of a tax treaty (including the India-Mauritius one), then GAAR provisions will be applied on that FII, but not to the holders of participatory notes (PNs). However, the FII in such cases will pass on only the post-tax gains to the PN holder.

To revise the DTAA, the two countries agreed to review the operations of the joint working group (JWG) that was set up in 2006. The talks for revising the DTAA were stalled in 2008 as Mauritius was not willing to allow India to tax capital gains at