



Direct Tax Code

Anti-avoidance Rules

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General Anti-avoidance Rules

- GAAR introduced as a deterrent to tax avoidance
- In line with provisions in mature tax jurisdictions
- Conditions for invoking GAAR
 - The tax payer should have entered into an arrangement
 - Main purpose of arrangement is to obtain a tax advantage and is
 - Not for bona fide business purpose
 - Creates rights and obligations not normally created between persons dealing at arms' length
 - Results, directly or indirectly, in the abuse of provisions of DTC
 - Lacks commercial substance, in whole or in part
- Tax benefit to cover reduction, avoidance, deferral of tax or increase in refund
- Criteria for deeming lack of commercial substance laid down



Consequences of invoking GAAR

- If conditions satisfied, CIT empowered to declare arrangement as 'impermissible avoidance arrangement' and:
 - Disregard, combine or re-characterize any step or part of arrangement
 - Treat the arrangement as if it had not been entered into
 - Deem or treat connected persons as one and the same person
 - Disregard any accommodating party
 - Re-allocate income, receipt both capital and revenue, expenditure, deduction, relief or rebate amongst parties
 - Re-characterize equity into debt and vice-versa
 - Re-characterize multi-party financing transactions
 - Disregard tax treaty provisions



Procedure for applying GAAR

- Power to invoke GAAR bestowed upon CIT
- CIT to call for necessary information and follow principles of natural justice in declaring an arrangement impermissible
- Burden of proof on tax payer to establish that tax benefit was not main purpose of arrangement
- CIT to determine tax consequences and issue appropriate directions to AO
- Directions of CIT binding on AO



Specific Anti-abuse Rules

- GAAR supported by Specific Anti-abuse Rules to be invoked in following circumstances:
 - Payment to associated persons in respect of expenditure
 - International transactions not at arms' length
 - Transactions resulting in transfer of income to non-residents
 - Avoidance of tax in certain transactions in securities such as sale and buy-back, buy and sale-back and broken period income from debt



Likely effect of GAAR

- Introduces significant uncertainty for tax payers
- Bonafide transactions may be caught in GAAR net, increasing transaction costs
- Introduction of thin-capitalization norms by granting power to treat debt as equity
- Treaty override provisions may impact confidence of foreign investors



Thank you