



General Anti Avoidance Rule (GAAR) Provisions in India

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(A) GAAR Provisions in India

(Under section 95 of ITA, 1961)

1. *GAAR provisions are 1st time introduced through Direct Tax Code (DTC) Bill, 2009.*
2. *Revised discussion paper is released on GAAR provisions through DTC Bill, 2010.*
3. *GAAR provisions are 1st time inducted through budget 2012-13.*
4. *GAAR provisions inducted through budget 2012-13 were widely criticized due to lack of clarity + lack of safeguards + increased the discretion in selection by Income tax officials.*
5.
 - (a) *Govt. of India (Govt.) has set up a committee under leadership of Mr. Parthasarathy Shome in 2012 to review GAAR provisions.*
 - (b) *Committee has suggested GAAR provisions should be deferred for not exceeding 5 years like up to March 31, 2017 for creating administrative machinery for implementing GAAR provisions + training Income tax officials.*
6.
 - (a) *GAAR provisions are actually introduced through a press release issued by Central Board of Direct Taxes (CBDT) vide press release dated January 27, 2017*
 - (b) *GAAR provisions are applicable from assessment year 2018-19 for financial year ending March 31, 2018. Hence GAAR provisions are applicable from April 01, 2017*
 - (c) *GAAR provisions are inserted as chapter X-A under Income Tax Act (ITA) 1961.*
 - (d) *Procedures for application GAAR provisions + mandatory conditions to be applied are inserted under Income-tax Rules (ITR) 1962.*
7. *GAAR provisions are tax avoidance tool in hands Income tax deptt. where deptt. is catching the individual + company (both) for excessive + abnormal + non bona fide etc. arrangement.*
8. *GAAR provisions are empowering Income tax authority to deny Income tax benefit (ITB) in arrangement where arrangement is not having any commercial substance over form except for avoiding or reducing Income tax liability.*



9. *GAAR provisions are consisting set of broad rules based on general principles to check the potential avoidance + reduction in Income tax liability.*
10. *GAAR provisions are inserted as general anti avoidance rule (GAAR) beside specific anti avoidance rule (SAAR) is already in ITA, 1961 like Transfer pricing (TP) regulations + Arm length principles (ALP) before introduction GAAR provisions say up to March 31, 2017*
11.
 - (a) *GAAR provisions are applicable on Individual + company (both).*
 - (b) *Hence GAAR provisions are not applicable on non Individual + non company etc.*
12.
 - (a) *Income tax authorities are losing Income tax (revenue) through using an aggressive Income tax avoidance + planning by individual + company (both)*
 - (b) *Hence GAAR provisions are introduced in India for avoiding Income tax (revenue) losses through using an aggressive Income tax avoidance + planning by individual + company (both)*



(B) GAAR provisions applicable in India

1. *On action as ordinarily not being applied or employed for bona fide purpose*
2. *On action as having a presence of tainted element or purpose*
3. *On action as not ordinary for creating any right or obligation*
4. *On action as directly or indirectly for purpose of misusing or abusing the provisions under ITA, 1961*
5. *On action as lacking of commercial substance over form as 100% or not 100% (partly)*
6. *On action as not satisfying the question that why an individual or company is executing an arrangement where ordinary + sensible person or company cannot undertake without a willful intention for obtaining ITB (only) through fooling Income tax deptt.*
7. *On action as aggressive tax avoidance planning through use any sophisticate structure*
8. *On action as intentional + illegal for tax deferment*
9. *On action as setting an unit in SEZ notified area without having commercial substance over form but setting unit for transferring Income tax from 30% to 0% in SEZ area*
10. *On action as selling an immovable or movable asset below fair market value (FMV) under slump sale to special purpose vehicle (SPV)*
11. *On action an Impermissible Avoidance Arrangement (IAA)*
12. *On foreign investors (FIs) not taking any benefit of DTAA but executing non bona fide arrangement without having commercial substance over form*
13. (a) *GAAR provisions to be applied where not 100% (partly) arrangement is declared as IAA by PCIT or CIT + approving panel.*
(b) *Hence GAAR provisions also to be applied on not 100% (partly) arrangement declared as IAA by PCIT or CIT + approving panel.*



(C) GAAR provisions not applicable in India

1. *On action as ordinarily applied or employed for bona fide purpose*
2. *On action as not having a presence of tainted element + purpose*
3. *On action as ordinarily creating any right or obligation*
4. *On action as directly or indirectly for not misusing or not abusing any provision under ITA, 1961*
5. *On action as not lacking of commercial substance over form as 100% or not 100% (partly)*
6. *On action as satisfying the question that why an individual or company is executing*
7. *On action as not an aggressive tax avoidance through use of sophisticate structure*
8. *On action as not an intentional + illegal for tax deferment purpose*
9. *On action as setting an unit in SEZ notified area having commercial substance over form beside setting unit permitting for transferring rate of Income tax from 30% to 0% in SEZ area*
10. *On action as not selling a immovable or movable asset below fair market value (FMV) under slump sale to special purpose vehicle (SPV)*
11. *On action as not IAA*
12. *On foreign investors (FIs) not taking any benefit of DTAA + having bona fide arrangement with a commercial substance over form*
13. *On investment as made before April 01, 2017 but investment + income still continuing after April 01, 2017*
14. *On ITB as not exceeding INR 3 crore*
15. *On 100% arrangement as not declared as IAA by approving panel.*



(D) GAAR provisions + available solutions under ITA, 1961 for taxpayer

1. Meaning of tax evasion + tax avoidance + tax mitigation

(i) Tax evasion

● Meaning of tax evasion to include the followings:

(a) Any illegal act for evading income tax is called tax evasion. Tax evasion is liable for Income Tax + Income tax penalty + Income tax imprisonment (all)

● Meaning of Income tax + Income tax penalty

(b) Income tax under section 115 BBE of ITA, 1961 @ 60 % + surcharge @ 25% + cesses @ 4 %

(ba) Income tax Penalty under section 271 AAC @ 6%

(bb) Income tax Penalty under section 271 AAB @ 24%

(bba) Combined Income tax penalty under section 271AAC + 271 AAB @ 30% (6+24)

(bc) Income tax Penalty under section 271 AAB (1A) @ 60%

(bca) Combined Income tax penalty under section 271AAC + 271 AAB + 271 AAB (1A) @ 60% (6+24+30)

(bd) Income tax Penalty under section 271 AAC + 271 AAB + 271 AAB (1A) 66% (6+30+30) where taxpayer has not admitted an undisclosed income during search + also not included as undisclosed income in filling of return of income (ITR) after search is completed

(c) Any act of suppression of facts as willfully + knowingly + intentionally is called tax evasion. Tax evasion is liable for Income Tax + Income tax penalty + Income tax imprisonment (all)

(d) Any act of misrepresentation in any manner as willfully + knowingly + intentionally is called tax evasion. Tax evasion is liable for Income Tax + Income tax penalty + Income tax imprisonment (all).

(e) Any act of fraud in any manner as willfully + knowingly + intentionally is called tax evasion. Tax evasion is liable for Income Tax + Income tax penalty + Income tax imprisonment (all)



(f) *Abovementioned 4 nature of tax evasions is prohibited under ITA, 1961. These tax evasions are liable for Income Tax + Income tax penalty + Income tax imprisonment (all)*

(ii) **Tax avoidance**

(a) *Any act of tax avoidance in any manner is not illegal or forbidden under ITA, 1961*

(b) *Although tax avoidance is not illegal but not desirable under ITA, 1961*

(c) *However any act of tax avoidance for availing ITB (only) without any commercial substance over form is not permitted + liable for invoking GAAR provisions consequently liable for Income Tax + Income tax penalty + Income tax imprisonment (all)*

(iii) **Tax mitigation**

(a) *Any act of tax mitigation is legally permitted under ITA, 1961 where taxpayer has taken advantage of allowable (permissible) tax incentives + complied all terms and conditions for availing the tax incentives.*

(b) *Hence tax mitigation is legally permitted under ITA, 1961 where taxpayer is not liable for Income Tax + Income tax penalty + Income tax imprisonment (all).*

2. **Meaning of 100% Income tax certainty through Ruling from AAR**

(i) *Govt. has permitted to achieve 100% tax certainty against proposed (future) arrangement through applying for ruling from AAR by taxpayer to determine whether GAAR provisions are applicable or not applicable for future arrangement to be undertaken.*

(ii) *Resident + non-resident (both) taxpayers are permitted for applying for ruling from AAR to determine whether GAAR provisions are applicable or not applicable for future arrangement to be undertaken.*

(iii) *Govt. has recently clarified that GAAR provisions are not to be invoke where ruling of AAR is in favor of taxpayer*

(iv) *Application for Advance Ruling is to be submitted in prescribed form + along with applicable fee.*

(v) *Ruling from AAR is to be delivered within a period not exceeding 6 months from date of application as submitted by taxpayer*



3. **Meaning of solution through appeal before ITAT + High court + Supreme court**

- (i) Taxpayer is permitted to appeal before ITAT against order as passed by AO on direction of approve panel
- (ii) Subsequently taxpayer is permitted to appeal before high court + supreme court

4. **Meaning of solution through writ petition before High court**

- Taxpayer is permitted to file a writ petition before high court against directions of approving panel where order is violating the principles of natural justice + misapplication of law

5. **Meaning of consequences after invoking GAAR provisions**

- (i) Disregarding or re-characterizing the 100% or not 100% (partly) arrangement
- (ii) Re-assignment of place of residence or site of asset or transaction
- (iii) Disregarding of corporate structure
- (iv) Re-allocation of income + expenses + relief + etc.
- (v) Denial of DTAA (treaty) benefit
- (vi) Re-characterization of equity-debt income + expenses + relief + etc
- Consequences of invoking GAAR provisions are to be taxed under ITA, 1961 in hands of both parties of arrangement.

6. **Meaning of onus on taxpayer for proving non applicability of GAAR provisions**

- (i) Taxpayer in India is liable to establish that arrangement is not liable for invoking GAAR provisions
- (ii) Taxpayer is required to establish that arrangement as undertaken although with main object of ITB but arrangement is backed by 100% commercial substance over form
- (iii) Hence taxpayer is required to demonstrate that arrangement as undertaken is backed by 100% commercial substance over form.
- (iv) Now invoking GAAR provisions in India is playing a significant role for domestic company + foreign company + resident of India + non-resident of India (all).



7. **Meaning of Role for AO + PCIT or CIT + approving panel**

(i) **Role for Assessing officer (AO)**

- (a) AO is permitted to examine any arrangement for finding an IAA.
- (b) AO is permitted to refer any arrangement to PCIT or CIT to declare as IAA where AO is confident that IAA is likely to be existed in arrangement.
- (c) AO is required to prepare + send an order to taxpayer where arrangement is declare as IAA after proper examination by approving panel + rectification by PCIT or CIT if rectification is required as based on instruction by approving panel.
- (d) AO is permitted to initiate an enquiry during course of assessment for same tax year + earlier tax year + future tax year.
- +
- (e) AO is permitted to refer to PCIT or CIT for invoking GAAR provisions where AO is confident that IAA is likely to be existed in arrangement

(ii) **Role for PCIT or CIT**

- (a) PCIT or CIT is permitted to issue a show cause notice to taxpayer where PCIT or CIT is satisfied that IAA is existed in arrangement.
- (b) Taxpayer is required to furnish relevant document + explanation within a period not exceeding 60 days that IAA is not existed in arrangement
- (c) PCIT or CIT is permitted to refer to approving panel for approval where PCIT or CIT is satisfied that IAA is existed in arrangement beside submission of document + explanation by taxpayer
- or
- (d) PCIT or CIT is required to issue an order in favor of taxpayer where PCIT or CIT is satisfied that IAA is not existed in arrangement after receipt of document + explanation from taxpayer

(iii) **Role for Approving panel (consisting of judges from high courts)**

- (a) Approving Panel is required to provide an opportunity being heard to taxpayer.



- (b) *Approving Panel is not required to provide an opportunity being heard to taxpayer where approving panel is satisfied with document + explanation as submitted by taxpayer that invoking GAAR provisions are not required.*
- (c) *Approving Panel is required to issue the directions to PCIT or CIT + AO (both) where invoking GAAR provisions are required*
- (d) *Approving Panel is required to issue the directions within a period not exceeding 6 months from date of receipt of reference from PCIT or CIT*
 - (da) *Directions of approving panel are binding on PCIT or CIT + taxpayer (both)*
 - (db) *Taxpayer is not permitted to file any appeal against directions by approving panel.*
- (iv) *PCIT or CIT + approving panel (both) are not permitted for invoking GAAR provisions in 2nd year where arrangement was permitted without invoking GAAR provisions for 1st year + facts + circumstances in 2nd year are remained the same*

8. Answers by CBDT against Frequently Asked Questions (FAQs) from taxpayers

- **Notified vide circular no. 07 dated January 27, 2017**

- (i) *Whether SAAR + GAAR (both) are simultaneously applicable in arrangement ?*

Yes

SAAR + GAAR (both) are simultaneously applicable in arrangement as Specific Anti Avoidance Rule like TP regulations + ALP and as General Anti Avoidance Rule like IAA both are co-existed

- (ii) *Whether GAAR provisions are applicable where LOB test of treaty already passed ?*

No

GAAR provisions are not applicable where LOB test of treaty already passed + LOB is sufficiently addressing 100% tax avoidance planning's

- (iii) *Whether GAAR provisions are interplaying with right of taxpayer to select or choose a method for implementing an arrangement?*

No

GAAR provisions are not interplaying with right of taxpayer to select or choose a method for implementing an arrangement



- (iv) *Whether benefit for grand fathering is available against investments as made before April 01, 2017 ?*
Yes
Taxpayer is permitted a benefit for grand fathering against investments as made before April 2017
- (v) *Whether GAAR provisions are applicable in arrangement as permissible by AAR ?*
No
GAAR provisions are not applicable in arrangement as permissible by Authority for Advance Ruling (AAR)
- (vi) *Whether GAAR provisions are applicable in arrangement as approved by court + NCLT?*
No
GAAR provisions are not applicable in arrangement as approved by court + NCLT where court + NCLT have explicitly + adequately considered ITB while approving an arrangement as non IAA
- (vii) *Whether invoking GAAR provisions are not mandatory in genuine cases ?*
Yes
GAAR provisions are not invoked in genuine cases after proper examination by PCIT or CIT + approving panel (both).
- (viii) *Whether GAAR provisions are applicable on notional income + disallowance of actual expenditure ?*
No
GAAR provisions are not applicable on notional income + disallowance of actual expenditure but IAA is to be disregarded + consequently Income tax + Income tax penalty (all) are to be levied + prosecution is to be initiated accordingly
- (ix) *Whether limit for ITB of 3 crores is applicable for single arrangement ?*
Yes
GAAR provisions are applicable where ITB is exceeding 3 crores for single arrangement + single assessment year + single taxpayer only
- (x) *Whether GAAR provisions are applicable in 2nd year where in 1st year not applicable ?*
No



GAAR provisions are not applicable in 2nd year where in 1st year was not applicable subject to facts + circumstances in 2nd year are remained same.

(xi) Whether Income tax penalty is not to initiate up to 5 years where additions made under GAAR provisions?

Yes

Income tax Penalty is not to initiate up to 5 years where addition is made under GAAR provisions. However taxpayer is permitted to avail benefit under section 273A of ITA, 1961 subject to satisfaction of terms + conditions as prescribed.



(E) GAAR provisions + Meanings + Miscellaneous

1. Meaning of Impermissible Avoidance arrangement (IAA) under section 96 of ITA, 1961

- (i) GAAR provisions are empowering Income tax authority to declare any arrangement as IAA + to determine Income tax consequence after declaring any arrangement as IAA.*
- (ii) IAA is including any arrangement where main purpose of arrangement for obtaining ITB + arrangement is lacking a commercial substance over form.*
- (iii) GAAR provisions are empowering Income tax authority to scrutinize an arrangement + to declare as IAA + apply GAAR provisions beside arrangement already existed in DTAA.*
- (iv) Now the DTC provisions + amendments as made by govt. after recommendations of Shome Committee that arrangement to be treated as IAA where minimum 2 mandatory conditions are satisfied.*
 - (a) That main purpose of arrangement for obtaining ITB only.*
 - (b) That main purpose of arrangement for obtaining ITB only + minimum 4 additional mandatory conditions is satisfied:*
 - (ba) That 100% violation of ALP is existed*
 - (bb) That result of arrangement is directly or indirectly for purpose of misusing or abusing DTC provisions.*
 - (bc) That commercial substance over form is 100% or not 100% (partly) is existed in arrangement.*
 - (bd) That arrangement is not for bona fide business purpose + not with good intention*

2. Meaning of commercial substance over form under section 97 of ITA, 1961

- (i) Arrangement is to be treated as lacking for commercial substance where arrangement has not major (significant) effect on business risk + net cash flow of any party except major effect for obtaining ITB only.*
- (ii) Substance or effect of arrangement as wholly or party is differ significantly from individual step is taken*

- (iii) *Where arrangement is involving a location of asset or residence of any party without any major commercial substance over form*
- (iv) *Where arrangement is involving a round-trip financing to accommodate related or non related party*
- (v) *Lacking commercial substance over form is also including :*
 - (a) *Round trip financing*
 - (b) *Accommodating party*
 - (c) *Elements having effect of offsetting + cancelling each other*
 - (d) *Transaction as conducted through 1 or more persons + disguises the value + location + source + ownership + control of fund as subject matter of transaction*
- (vi) *Round trip financing including:*
 - (a) *Any fund is transferred among parties to arrangement*
 - (b) *Any transaction not having any substantial commercial purpose except for obtaining ITB only*

3. *Meaning of Arrangement under section 102 (1) of ITA , 1961*

- *Arrangement is including any step in part or full as enforceable or not enforceable:*
 - (i) *Any transaction*
 - (ii) *Any operation*
 - (iii) *Any scheme*
 - (iv) *Any agreement*
 - (v) *Any understanding*
 - (vi) *Any alienation of property*

4. *Meaning of ITB under section 102 (11) of ITA, 1961*

- (i) *Reduction + avoidance + deferral of tax + other amount as payable under ITA, 1961*
- (ii) *Increase in Income tax refund + increase in other amount as receivable under ITA, 1961*
- (iii) *Reduction + avoidance + deferral of tax + other amount as payable under tax treaty.*



- (iv) Increase in Income tax refund + increase in other amount as receivable under tax treaty
- (v) Reduction in total income + increase in loss in relevant previous year + any other previous year

5. **Meaning of Income Tax avoidance**

- (i) Income Tax avoidance is deliberate measure to avoid or reduce Income tax liability.
- (ii) Income Tax avoidance is not defined properly under ITA 1961.
- (iii) Generally Income Tax avoidance is not illegal under ITA, 1961 but using aggressive tool + planning is illegal.

6. **Meaning of commercial substance beside certain facts**

- (i) Time period for arrangement is expired
- (ii) Payment of tax in arrangement is directly or indirectly involved
- (iii) Existence of exit route in arrangement
- Hence the circumstance in each case to be carefully evaluated to determine an existence or absence of IAA in arrangement

7. **Meaning of GAAR Provisions + Multilateral Instrument (MLI) under BEPS**

- (i) MLI is introduced by OECD as part of BEPS action plan.
- (ii) MLI is co-existence with DTAA (treaty) to address the effect of erosion of tax base.
- (iii) India has signed MLI in Paris on June 07, 2017.
- (iv) (a) MLI is desired that 100% signatories to meet certain treaty-related minimum standard to counter abuse of treaties.
- (b) Principal Purpose Test (PPT) is minimum standard to be satisfied otherwise tax treaty benefit to be denied where PPT of arrangement to obtain directly or indirectly ITB only.
- (v) (a) Hence PPT is bigger than GAAR provisions.
- (b) Tax Treaty benefit to be denied if PPT is failed where ITB to be denied if PPT + TET (Tainted Element Test) both are failed.



- (c) Hence tax treaty benefit to be denied if 1 PPT is failed where ITB to be denied if 2 tests are failed like PPT + TET (both). Hence PPT is bigger than GAAR provisions.
- (vi) Income tax authority is permitted to deny tax treaty benefit through invoking GAAR provisions where taxpayer is failed in PPT
- (vii) Although PPT can also be avoided where certain clauses already existed in treaty in accordance the objective + purpose of treaty commonly known as carve-out for application of PPT
- (viii) AO is permitted to deny tax treaty benefit through invoking GAAR provisions where PPT is failed. This power with AO may increase the litigations
- (ix) Co-existence of MLI + GAAR (both) are uncertain which may create anxiety for taxpayer.

8. **Meaning of difficulty in invoking GAAR Provisions**

- (i) GAAR provisions are unconventional Income tax legislation for bringing Income tax avoidance through scrutiny by Income tax official
- (ii) GAAR provisions are tough to implement + differentiate between different Income tax avoidance planning tool as used by taxpayer
- (iii) Difference between not permissible + permissible tax planning is small
- (iv) Difficult to filtrate a permissible arrangement from IAA
- (v) Difficult to target for arrangement where main purpose for obtaining ITB only
- (vi) Difficult to apply through invoking lengthy procedure routing through several Income tax administration like AO + PCIT or CIT + approving panel

9. **Meaning of GAAR provisions + DTAA (treaty) regulations**

- (i) DTAA and GAAR are 2 sets of regulations for using by Income tax administration where DTAA is used for handling the duplicating Income tax liability in India + outside India (both) and GAAR provisions are used for avoiding anti-tax planning.
- (ii) GAAR provisions are restricted to tax jurisdiction in India (only) where DTAA is extended to tax jurisdiction in India + outside India (both).



- (iii) Hence DTAA regulations to override GAAR provisions where conflict is existed between GAAR and DTAA.
- (iv) However GAAR provisions to override DTAA regulations where IAA is existed in DTAA
- (v) (a) CBDT has clarified vide circulars no. 07 dated January 27, 2017 that GAAR provisions to override DTAA regulations where IAA is existed in DTAA.
(b) Hence GAAR provisions to be applied where Anti-Avoidance regulations existed in DTAA not sufficient to address 100% Income tax avoidance planning.
(c) However GAAR provisions not to be applied where Limitation of Benefit (LoB) provisions existed in DTAA where LoB provisions 100% sufficient to address Income tax avoidance planning.

10. Meaning of GAAR provisions before April 01, 2017

- (i) Indian courts were dealing Income tax avoidance cases before GAAR provisions from April 01, 2017 through inferences from decisions as pronounced by English Courts like Duke of Westminster where affirmed that bona fide arrangement restricted from dissecting underlying commercial substance over form.
- (ii) This principle has resonated in Indian Courts through ruling of Azadi Bachao Andolan + Vodafone + etc.
- (iii) Indian Courts have concluded that colorable or dubious arrangement be disregarded applying doctrine + piercing of corporate veil.
- (iv) Introduction GAAR provisions to codify the law to address any issue of Income tax avoidance or Income tax mitigation.
- (v) (a) TP regulations are genre of SAAR as introduced in India in 2001 but in other countries TP regulations are existed from 1981.
(b) However due to introduction of TP regulations in India the Income tax disputes have been rise accordingly litigations have increased substantially.
(c) India has generated maximum litigations due to introduction of TP regulations as comparative to other countries outside India.



(vi) *Before introduction of TP regulations Income tax authorities were labeling certain arrangements as sham or subterfuge accordingly disregarded for Income tax purposes*

11. Meaning of GAAR provisions outside India

● *GAAR provisions have already been enacted in 16 countries outside India:*

(i) *Australia*

(ii) *Belgium*

(iii) *Canada*

(iv) *China*

(v) *France*

(vi) *Germany*

(vii) *Italy*

(viii) *Ireland*

(ix) *Kenya*

(x) *Netherlands*

(xi) *New Zealand*

(xii) *Poland*

(xiii) *Singapore*

(xiv) *South Africa*

(xv) *United Kingdom (UK)*

(xvi) *United States of America (USA)*

12. Professional advises for invoking or not invoking GAAR provisions

● *GAAR provisions are applicable from April 01, 2017 therefore taxpayer is advised to get review his arrangement from professional for invoking or not invoking GAAR provisions:*

(i) *For reviewing the inbound structure where holding company is holding Intellectual Property (IP) rights in 0% or low-tax jurisdiction like Cyprus or Singapore etc.*

(ii) *For reviewing the restructuring of arrangement like merger, de-merger, acquisition, slump sale, selective buy-back, gift of shares and conversion of Limited Liability Partnership (LLP) etc.*



- (iii) For reviewing the trust structure + succession planning*
- (iv) For reviewing the cash repatriation structure including inter-group arrangement as involving the royalty + service fee + etc.*
- (v) For reviewing the transfer of land being used by partnership firm*
- (vi) For reviewing the employee benefit plan + thin capitalization planning*
- (vii) For reviewing the applicability GAAR provisions on existing (present) arrangement*
- (viii) For guiding the applicability GAAR provisions on propose (future) arrangement*
- (ix) For guiding the preparation of defense document for proving that existing + propose (both) arrangement are not liable for invoking GAAR provisions*
- (x) For representing before AO + PCIT or CIT + approving panel + AAR + ITAT + High courts + supreme court*



(F) GAAR provisions Conclusion

1. (i) *Govt. has realized the challenge of implementing GAAR provisions. Hence implementation of GAAR was originally as hold back for 5 years say up to March 31st 2017.*

(i) *Govt. has set up standing committee to provide an input on draft law + to introduce the Safe Harbour + to decide level of approvals before GAAR provisions are actually implemented.*
2. (i) *However despite above mentioned measures GAAR provisions are having diversity of situations whether GAAR provisions are to be applied still unresolved which may create an uncertainty in taxpayer's mind. Hence it may deterrent to business growth + foreign investment in India.*

(ii) *Under GAAR provisions regime taxpayer is required to demonstrate the commercial substance over form for each arrangement which may lead to increase an emphasis on documentation of business rationale for each transaction or reorganization like merger or acquisition etc.*
3. *Purpose of introducing GAAR provisions was to evolve India's tax policy + simplification in legislation. Hence GAAR provisions are codifying the principles of commercial substance over form + to bring the law principle as concluded in several landmark court judgments.*
4. (i) *GAAR provisions are empowering Income tax authority to deal effectively + to guard against several schemes as designated by taxpayer for reducing income tax liability (govt. revenue).*

(ii) *Hence GAAR provisions are strengthening the arms for giving Income tax authority for sweeping power to disregard or to re-characterize the arrangement + consequent Income tax liability where arrangement is designed with main purpose to obtain ITB (only) + also not having commercial substance over form.*
5. (i) (a) *Many developed countries have already implemented GAAR provisions properly.*
(b) *Moreover their income tax acts have already incorporated GAAR provisions.*

(ii) *It is suggested that GAAR provisions in India be incorporated in ITA, 1961 similar as already incorporated outside India*



6.
 - (i) *Before an introducing GAAR provisions in India some arrangements were designed by taxpayers to avoid Income tax liability such arrangements were dealt through Indian court's decisions under SAAR like TP regulations + ALP as already existed in ITA, 1961.*
 - (ii) *Moreover Indian courts are consistently an affirming the cardinal principle arrangements are genuine. Hence Indian courts have not disregard the existing structure of bona fide arrangement.*
7. *However Indian courts have disregarded arrangement where Indian courts have found arrangement as colorable or dubious. Hence Indian courts have applied the doctrines including piercing of corporate veil.*
8. *Therefore with help of judicial precedents the Govt. is to re-evaluate through prism of GAAR provisions. Hence it is essential to understand the fine line difference between acceptable Income tax mitigation and actual Income tax avoidance. Lack of clarity will expose the taxpayer for potential Income tax-related risk.*
9. *This Article is prepared to decode GAAR provisions to enable basic understanding of conditions as to be satisfied for application GAAR provisions + for approval + for latest mechanism as to be used by income tax authority to implement GAAR provisions.*



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