

THE GENERAL ANTI-AVOIDANCE RULES (GAAR)



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Introduction

General Anti Avoidance Rules (GAAR) is a set of general rules enacted so as to check tax avoidance.

Many methods are adopted by taxpayers to reduce their tax liability such as - "Tax Evasion"; "Tax Avoidance", "Tax Mitigation" and "Tax Planning". If the method is illegal as is in the case of Tax Evasion, the taxpayer may be penalized, however in most cases the methods adopted to reduce tax liability are legal as in Tax Avoidance, and per se the tax authorities are helpless.

Tax avoidance, is by and large not defined in taxing statutes. Tax avoidance is, nevertheless, the outcome of actions taken by the assessee, none of which or no combination of which is illegal or forbidden by the law as such. It is an attempt to reduce tax liability through regulating the affairs in such a way that the taxpayer pays the minimum tax imposed by the Act as opposed to the maximum. Tax Avoidance involves the legal exploitation of tax laws to one's own advantage and therefore it is an area of concern across the world.

Anti Avoidance rules can be classified into the following types-

- a. Measures based on general principles in the law - This refers to principles which are not codified in the legislation i.e they are non-statutory. They include a range of philosophies and approaches
- b. General Anti Avoidance rules (GAAR) - It has same meaning as "anti avoidance rules based on general principles in law" except that it is codified and included in the legislation
- c. Specific Anti Avoidance rules (SAAR) - These are the specific anti-avoidance rules included in the domestic tax legislation which applies to the specific situations- Controlled Foreign Corporation (CFC) rules, Thin Capitalization rules, Transfer Pricing rules, Withholding Tax, Exit Tax etc.

International Scenario on GAAR

GAAR is a concept which generally empowers the Revenue Authorities in a country to deny the tax benefits of transactions or arrangements, which do not have any commercial substance or consideration other than achieving the tax benefit.

Legislatures in various countries are moving towards promulgating General Anti-Avoidance Rules to address the ongoing debate between illegal evasion and 'legal' avoidance, or what is termed as 'acceptable' and 'unacceptable' avoidance of tax.

Certain countries have a GAAR equivalent (Australia, Canada, South Africa, as well as several European countries) with varying complexity, apparent effectiveness and degrees of criticism of their operation.

A Brief on the GAAR provisions of various countries:

1. United Kingdom

Currently, there are no GAAR like provisions in UK Statutes.

In December 2010 the Government asked Graham Aaronson QC to lead a study that would consider whether General Anti-Avoidance Rule (GAAR) could deter and counter tax avoidance, whilst providing certainty, retaining a tax regime that is attractive to businesses, and minimising costs for businesses and HMRC, the UK Tax Department.

The report by Graham Aaronson QC was published on 21 November 2011. UK's 2012 Budget accepted the Report's recommendations, converting the General Anti Avoidance Rule to General Anti Abuse Rule. The UK Government announced that there would be a year's consultation before bringing the legislation through the 2013 Finance Bill.

2. Australia

In Australia, application of GAAR is determined on the basis of 8 tests or factors.

"Part-IVA: the general anti-avoidance rule for income tax" of the Income Tax Assessment Act, 1936 (ITAA 1936) is the general anti-avoidance rule for income tax. It protects the integrity of the income tax system by ensuring that arrangements that have been contrived to obtain tax benefits will fail. Generally speaking, Part IVA will only apply to an arrangement if the answer is yes to both of the following questions:

1. Did you obtain a tax benefit from a scheme – a benefit that would not have been available if the scheme had not been entered into?
2. Having regard to the eight matters specified in Part IVA would it be objectively concluded that you or any other person entered into or carried out the scheme, or any part of it, for the sole or dominant purpose of obtaining the tax benefit?

3. United States (US)

There is no provision like GAAR in the US statutes. US courts have applied five main common law doctrines to deny taxpayers desired tax benefits, i.e.

- (1) economic substance;
- (2) substance over form;
- (3) step transaction;
- (4) business purpose; and
- (5) sham transaction.

On 30 March 2010, the economic substance doctrine was codified in US law through insertion of section 7701(o) in the Internal Revenue Code (IRC). The economic substance doctrine applies to transactions entered into after 31 March 2010.

4. Canada

Subsection 245(2) of the Income-tax Act states that where a transaction is an avoidance transaction, the tax consequences to a person shall be determined as is reasonable in the circumstances in order to deny a tax benefit that would result from that transaction or from a series of transactions that includes that transaction.

The Canadian Supreme Court had, in the case of *Cophorne Holdings Ltd. v. Canada*, 2011 SCC 63 observed that the general anti-avoidance rule scheme is set out in the Act and requires that three questions be decided: (1) was there a tax benefit; (2) was the transaction giving rise to the tax benefit an avoidance transaction; and (3) was the avoidance transaction giving rise to the tax benefit abusive.

An avoidance transaction is defined in subsection 245(3) as a single transaction or one that is a part of a series of transactions where the single transaction or the series results directly or indirectly in a tax benefit, unless the transaction is carried out primarily for bona fide purposes other than to obtain the tax benefit.

"Tax benefit" is defined to mean a reduction, avoidance or deferral of tax or other amount payable or an increase in a refund of tax or other amount under the Act.

5. South Africa

GAAR was introduced in 2006. In 2006, the Income Tax Act, 1962 was amended to introduce the general anti-avoidance rule (GAAR) which applies to 'impermissible avoidance arrangements'.

The GAAR is contained in Part IIA of Chapter III of the Income Tax Act and specifically applies to impermissible avoidance arrangements.

Four requirements have to be fulfilled in order for GAAR to apply, namely-

- (i) the existence of an arrangement;
- (ii) the existence of a tax benefit (that is, an arrangement resulting in a tax benefit);
- (iii) the sole or main purpose of the avoidance arrangement is to obtain a tax benefit; and
- (iv) the avoidance arrangement is characterized by the presence of any one or more of four tainted elements for arrangements in the context of business and any one or more of three tainted elements for arrangements in the context other than business, which renders it an impermissible avoidance arrangement.

6. China

The new EITL (Enterprise Income Tax Law) which came into effect on 1st January 2008 includes a general anti-avoidance provision - (Article 47 of the EITL).

Article 47 of the EITL provides: "If an enterprise engages in a business arrangement without bonafide commercial purposes that results in reducing its taxable revenue or taxable income, the tax bureau has the right to make adjustments based on reasonable methods."

GAAR in India

The GAAR provisions were introduced in 2009 through the first draft of the Direct Taxes Code (DTC). Subsequently, the provisions were introduced in the DTC Bill 2010. The Parliamentary Standing Committee on Finance had discussions with stakeholders and the Government has now deferred GAAR by one year from 2012 to 2013. The guidelines could now be notified once the Expert Committee on GAAR report is commented upon and selected comments are incorporated.

India, wanted to address the issues relating to tax avoidance and evasion by bringing in General Anti-Avoidance Rules (GAAR) in addition to various transaction-specific Special Anti-Avoidance provisions.

The Indian tax laws, though providing for specific anti-avoidance measures, did not have any general anti-avoidance rules or regulations. The Courts have over the years drawn out the general parameters and principles in outlining whether a transaction or scheme would be considered as tax avoidance/tax evasion or tax planning. In light of the various judicial precedents, the tax authorities in India raise the issue of tax avoidance.

Given the uncertainties involved in such application, the proposed GAAR was introduced.

A timeline of events in the introduction of GAAR are:

12 August 2009 - GAAR was introduced for the first time in the Direct Taxes Code Bill, 2009

30 August 2010 - Some modifications in Direct Taxes Code Bill, 2010

27 February 2012 - Committee was formed by CBDT to provide recommendations for formulating guidelines to implement the GAAR provisions and to draft a circular so as to ensure that GAAR is not applied indiscriminately

16 March 2012 - Finance Bill 2012 proposed to introduce GAAR from 1 April 2012
28 May 2012 - GAAR was deferred till 1 April 2013 on enactment of the Finance Bill 2012

28 June 2012 - Draft GAAR Guidelines were released by Government of India

13 July 2012 - Expert Committee (EC) on GAAR was constituted under the chairmanship of Dr. Parthasarathi Shome to vet and rework the GAAR Guidelines

1 September 2012 - Report of the Expert Committee is published

1 October 2012 - Final Report submitted by the Export Committee to the Finance Minister though not released

Final Report under review by the Finance Minister and expected to be released within the next few days.

GAAR Provisions In Finance Act 2012

The provisions relating to GAAR appear in Chapter X-A (sections 95 to 102) of the Finance Act 2012. As proposed, GAAR can be invoked once an arrangement is declared as an "impermissible avoidance arrangement".

ARRANGEMENT:

Applies to an impermissible avoidance arrangement and "arrangement" means any step in, or a part or whole of, any transaction, operation, scheme, agreement or understanding, whether enforceable or not, and includes the alienation of any property in such transaction, operation, scheme, agreement or understanding;

IMPERMISSIBLE AVOIDANCE ARRANGEMENT:

An impermissible avoidance arrangement means an arrangement, the main purpose or one of the main purposes of which is to obtain a tax benefit and it –
(a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;
(b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;
(c) lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or
(d) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.

PRESUMPTION OF PURPOSE:

An arrangement shall be presumed to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit.

ARRANGEMENT TO LACK COMMERCIAL SUBSTANCE:

- 1) An arrangement shall be deemed to lack commercial substance if—
 - (a) the substance or effect of the arrangement as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part; or
 - (b) it involves or includes—
 - (i) round trip financing;
 - (ii) an accommodating party;
 - (iii) elements that have effect of offsetting or cancelling each other; or
 - (iv) a transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of funds which is the subject matter of such transaction; or
 - (c) it involves the location of an asset or of a transaction or of the place of residence of any party which is without any substantial commercial purpose other than obtaining a tax benefit (but for the provisions of this Chapter) for a party.
 - (2) For the purposes of sub-section (1), round trip financing includes any arrangement in which, through a series of transactions—
 - (a) funds are transferred among the parties to the arrangement; and
 - (b) such transactions do not have any substantial commercial purpose other than obtaining the tax benefit (but for the provisions of this Chapter), without having any regard to—
 - (A) whether or not the funds involved in the round trip financing can be traced to any funds transferred to, or received by, any party in connection with the arrangement;
 - (B) the time, or sequence, in which the funds involved in the round trip financing are transferred or received; or
 - (C) the means by, or manner in, or mode through, which funds involved in the round trip financing are transferred or received.
 - (3) For the purposes of this Chapter, a party to an arrangement shall be an accommodating party, if the main purpose of the direct or indirect participation of that party in the arrangement, in whole or in part, is to obtain, directly or indirectly, a tax benefit (but for the provisions of this Chapter) for the assessee

whether or not the party is a connected person in relation to any party to the arrangement.

(4) The following shall not be taken into account while determining whether an arrangement lacks commercial substance or not, namely:—

- (i) the period or time for which the arrangement (including operations therein) exists;
- (ii) the fact of payment of taxes, directly or indirectly, under the arrangement;
- (iii) the fact that an exit route (including transfer of any activity or business or operations) is provided by the arrangement.

CONSEQUENCE OF IMPERMISSIBLE AVOIDANCE ARRANGEMENT:

If an arrangement is declared to be an impermissible avoidance arrangement, then the consequences, in relation to tax, of the arrangement, including denial of tax benefit or a benefit under a tax treaty, shall be determined, in such manner as is deemed appropriate, in the circumstances of the case, including by way of but not limited to the following, namely:—

- (a) disregarding, combining or recharacterising any step in, or a part or whole of, the impermissible avoidance arrangement;
 - (b) treating the impermissible avoidance arrangement as if it had not been entered into or carried out;
 - (c) disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;
 - (d) deeming persons who are connected persons in relation to each other to be one and the same person for the purposes of determining tax treatment of any amount;
 - (e) reallocating amongst the parties to the arrangement—
 - (i) any accrual, or receipt, of a capital or revenue nature; or
 - (ii) any expenditure, deduction, relief or rebate;
 - (f) treating—
 - (i) the place of residence of any party to the arrangement; or
 - (ii) the situs of an asset or of a transaction,
at a place other than the place of residence, location of the asset or location of the transaction as provided under the arrangement; or
 - (g) considering or looking through any arrangement by disregarding any corporate structure.
- (2) For the purposes of sub-section (1),—
- (i) any equity may be treated as debt or vice versa;
 - (ii) any accrual, or receipt, of a capital nature may be treated as of revenue nature or vice versa; or
 - (iii) any expenditure, deduction, relief or rebate may be recharacterised.

The provisions of this Chapter shall be applied in accordance with such guidelines and subject to such conditions and the manner as may be prescribed. The provisions of this Chapter shall apply in addition to, or in lieu of, any other basis for determination of tax liability.

For the purposes of this Chapter, in determining whether a tax benefit exists –

- (i) the parties who are connected persons in relation to each other may be treated as one and the same person;
- (ii) any accommodating party may be disregarded;
- (iii) such accommodating party and any other party may be treated as one and the same person;
- (iv) the arrangement may be considered or looked through by disregarding any corporate structure.

REFERENCE TO COMMISSIONER AND APPROVING PANEL INCLUDING BURDEN OF PROOF:

- (1) If, the Assessing Officer, at any stage of the assessment or reassessment proceedings before him having regard to the material and evidence available, considers that it is necessary to declare an arrangement as an impermissible avoidance arrangement and to determine the consequence of such an arrangement within the meaning of Chapter X-A, then, he may make a reference to the Commissioner in this regard.
- (2) The Commissioner shall, on receipt of a reference under sub-section (1), if he is of the opinion that the provisions of Chapter X-A are required to be invoked, issue a notice to the assessee, setting out the reasons and basis of such an opinion, for submitting objections, if any, and providing an opportunity of being heard to the assessee within such period, not exceeding sixty days, as may be specified in the notice.
- (3) If the assessee does not furnish any objection to the notice within the time specified in the notice issued under sub-section (2), the Commissioner shall issue such directions as it deems fit in respect of declaration of the arrangement to be an impermissible avoidance arrangement.
- (4) In case the assessee objects to the proposed action, and the Commissioner, after hearing the assessee in the matter, is not satisfied by the explanation of the assessee, then, he shall make a reference in the matter to the Approving Panel for the purpose of declaration of the arrangement as an impermissible avoidance arrangement.
- (5) If the Commissioner is satisfied, after having heard the assessee that the provisions of Chapter X-A are not to be invoked, he shall by an order in writing communicate the same to the Assessing Officer with a copy to the assessee.

(6) The Approving Panel, on receipt of reference from the Commissioner under sub-section (4) shall issue such directions, as it deems fit, in respect of the declaration of the arrangement as an impermissible avoidance arrangement in accordance with the provisions of Chapter X-A including specifying the previous year or years to which such declaration of an arrangement as an impermissible avoidance arrangement shall apply.

(7) No direction under sub-section (6) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, as the case may be.

(8) The Approving Panel may, before issuing any direction under sub-section (6),—

- (i) if it is of the opinion that any further inquiry in the matter is necessary, direct the Commissioner to make such further inquiry or cause to make such further inquiry to be made by any other income-tax authority and furnish a report containing the results of such inquiry to it; or
- (ii) call for and examine such records related to the matter as it deems fit; or
- (iii) require the assessee to furnish such document and evidence as it may so direct.

(9) If the members of the Approving Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction, issued by the Approving Panel under sub-section (6) or the Commissioner under sub-section (3), shall be binding on the Assessing Officer and the Assessing Officer on receipt of the directions shall proceed to complete the proceedings referred to in sub-section (1) in accordance with the directions and provisions of Chapter X-A.

(11) If any direction issued under sub-section (6) specifies that declaration of the arrangement as impermissible avoidance arrangement is applicable for any previous year to which the proceeding referred to in sub-section (1) pertains, then, the Assessing Officer while completing any assessment or reassessment proceedings of the assessment year relevant to such other previous year shall do so in accordance with such directions and the provisions of Chapter X-A and it shall not be necessary for him to seek fresh direction on the issue for the relevant assessment year.

(12) No order of assessment or reassessment shall be passed by the Assessing Officer without the prior approval of the Commissioner if any tax consequences have been determined in the order under the provisions of Chapter X-A pursuant to a direction issued under sub-section (6) or sub-section (3) declaring the arrangement as impermissible avoidance arrangement.

(13) No direction under sub-section (6) shall be issued after a period of six months from the end of the month in which the reference under sub-section (4) was received by the Approving Panel.

- (14) The Board shall, for the purposes of this section constitute an Approving Panel consisting of not less than three members, being – (i) income-tax authorities not below the rank of Commissioner; and
(ii) an officer of the Indian Legal Service not below the rank of Joint Secretary to the Government of India.
- (15) The Board may make rules for the purposes of the efficient functioning of the Approving Panel and expeditious disposal of the references received under sub-section (4).

NOTES:

1. "associated person", in relation to a person, means—
 - (a) any relative of the person, if the person is an individual;
 - (b) any director of the company or any relative of such director, if the person is a company;
 - (c) any partner or member of a firm or association of persons or body of individuals or any relative of such partner or member if the person is a firm or association of persons or body of individuals;
 - (d) any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family;
 - (e) any individual who has a substantial interest in the business of the person or any relative of such individual;
 - (f) a company, firm or an association of persons or a body of individuals, whether incorporated or not, or a Hindu undivided family having a substantial interest in the business of the person or any director, partner, or member of the company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member;
 - (g) a company, firm or association of persons or body of individuals, whether incorporated or not, or a Hindu undivided family, whose director, partner, or member have a substantial interest in the business of the person, or family or any relative of such director, partner or member;
 - (h) any other person who carries on a business, if—
 - (i) the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or
 - (ii) the person being a company, firm, association of persons, body of individuals, whether incorporated or not, or a Hindu undivided family, or any director, partner or member of such company, firm or association of persons or body of individuals or family, or any relative of such director,

partner or member, has a substantial interest in the business of that other person;

2. "connected person" means any person who is connected directly or indirectly to another person and includes associated person

3. "tax benefit" means –

- (a) a reduction or avoidance or deferral of tax or other amount payable under this Act; or
- (b) an increase in a refund of tax or other amount under this Act; or (c) a reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or
- (d) an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or
- (e) a reduction in total income including increase in loss, in the relevant previous year or any other previous year.

4. a person shall be deemed to have a substantial interest in the business, if –

- (a) in a case where the business is carried on by a company, such person is, at any time during the financial year, the beneficial owner of equity shares carrying twenty per cent or more, of the voting power; or
- (b) in any other case, such person is, at any time during the financial year, beneficially entitled to twenty per cent or more, of the profits of such business

5. "step" includes a measure or an action, particularly one of a series taken in order to deal with or achieve a particular thing or object in the arrangement

6. "benefit" includes a payment of any kind whether in tangible or intangible form;

7. Treaty Override

Notwithstanding anything contained in sub-section (2) of Section 90, the provisions of Chapter X-A of the Act shall apply to the assessee, even if such provisions are not beneficial to him.

The Prime Minister constituted an Expert Committee on General Anti Avoidance Rules (GAAR) on 17th July, 2012 to undertake stakeholder consultations and finalise the guidelines for GAAR after widespread consultations so that there is a greater clarity on GAAR issues.

The Expert Committee is also referred to as Shome Committee as Dr. Parthasarathi Shome was the Chairman of the Committee.

The terms of reference of the Committee were:

- i) Receive comments from stakeholders and the general public on the draft GAAR guidelines which have been published by the Government on its website.
- ii) Vet and rework the guidelines based on this feedback and publish the second draft of the GAAR guidelines for comments and consultations.
- iii) Undertake widespread consultations on the second draft GAAR guidelines.
- iv) Finalise the GAAR guidelines and a roadmap for implementation and submit these to the government.

The Parthasarathi Shome panel submitted its draft report on September 1st 2012 and final report on GAAR on 1st October 2012.

Report of the Expert Committee on General Anti Avoidance Rules (GAAR) in Income-tax Act, 1961

The Expert Committee on General Anti Avoidance Rules (GAAR) gave its draft report on 1st September, 2012.

It gave a list of recommendations for amendment in The Income Tax Act, 1961. Some of these recommendations are:

1. The implementation of GAAR may be deferred by three years on administrative grounds.
2. The Income Tax Act 1961 should be amended to provide that only arrangements which have the main purpose (and not one of the main purposes) of obtaining tax benefit should be covered under GAAR.
3. Section 97 of the Income Tax Act, 1961 should be amended to include a definition of "commercial substance" as under –
"An arrangement shall be deemed to be lacking commercial substance, if it does not have a significant effect upon the business risks, or net cash flows, of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained but for the provisions of this Chapter."

4. The definition of "connected person" may be restricted to "associated person" under section 102 and "associated enterprise" under section 92A of the Income Tax Act 1961
5. Constitution of the Approving Panel(AP)

The Approving Panel should consist of five members including Chairman; The Chairman should be a retired judge of the High Court; Two members should be from outside Govt. and persons of eminence drawn from the fields of accountancy, economics or business, with knowledge of matters of income-tax; and Two members should be Chief Commissioners of income tax; or one Chief Commissioner and one Commissioner.

The AP should be a permanent body with a secretariat. It should have a two year term.

In the first AP that is to be appointed, one Chief Commissioner and one external member from a specified field would be appointed to a one-year term.

If there is any need for further representation from particularly specialized fields, an updated roster of specialists should be maintained from which any additional member, may be drawn in an individual GAAR case.

A decision of the AP should occur by a majority of members.

Some recommendations have been made by the Committee for incorporation in guidelines to be prescribed under section 101 and 144BA of the Act in the Income-tax Rules, 1962. Some of these are:

1. The GAAR provisions should be subject to an overarching principle that
 - Tax mitigation should be distinguished from tax avoidance before invoking GAAR.
 - An illustrative list of tax mitigation or a negative list for the purposes of invoking GAAR, as mentioned in the Committee Report, should be specified.
 - GAAR should not be invoked in intra-group transactions which may result in tax benefit to one person but overall tax revenue is not affected either by actual loss of revenue or deferral of revenue.
 - GAAR is to be applicable only in cases of abusive, contrived and artificial arrangements.
2. A monetary threshold of Rs 3 crore of tax benefit (including tax only, and not interest etc) to a taxpayer in a year should be used for the applicability of GAAR provisions. In case of tax deferral, the tax benefit shall be determined based on the present value of money.
3. Where SAAR is applicable to a particular aspect/element, then GAAR shall not be invoked to look into that aspect/element. Similarly, where

- anti-avoidance rules are provided in a tax treaty in the form of limitation of benefit etc., the GAAR provisions shall not apply overriding the treaty.
4. A requirement of detailed reasoning by the Assessing Officer in the show cause to the taxpayer may be prescribed in the rules.
 5. The tax audit report may be amended to include reporting of tax avoidance schemes above a specific threshold of tax benefit of Rs. 3 crores or above.
 6. Statutory forms and Time Limits need to be prescribed

The Committee has recommended that the GAAR provisions in the statute as well in the rules should be explained through a circular as discussed in the report with categorical clarification on the following issues:-

- (i) GAAR shall apply only to the income received, accruing or arising, or deemed to accrue or arise, to the taxpayers on or after the date GAAR provisions come into force. In other words, GAAR will apply to income of the previous year, relevant to the assessment year in which GAAR becomes effective, and subsequent years.
- (ii) Where Circular No. 789 of 2000 with respect to Mauritius is applicable, GAAR provisions shall not apply to examine the genuineness of the residency of an entity set up in Mauritius.
- (iii) When the AO informs the assessee in his initial intimation invoking GAAR, he should include how the factors listed in section 97(2) have been considered (after amendment as recommended).

Other Recommendations made by the Committee in respect of tax administration are:-

- (i) The administration of Authority for Advance Ruling (AAR) should be strengthened so that an advance ruling may be obtained within the statutory time frame of six months.
- (ii) Until the abolition of the tax on transfer of listed securities, the Circular 789 of 2000 accepting Tax Residence Certificate (TRC) issued by the Mauritius authorities may be retained.
- (iii) When the Assessing Officer may or may not invoke GAAR while processing applications under section 195(2) or 197 of the Act, pertaining to the withholding of taxes
- (iv) To minimize the deficiency of trust between the tax administration and taxpayers, concerted training programmes should be initiated for all Assessing Officers placed, or to be placed, in the area of international taxation.

Conclusion

Outlining the timelines as regards future course of action on GAAR, The Finance Minister has split it into three stages - While the first stage related to the Ministry's finalisation of views on the Shome panel's final report, the second stage relates to finalising GAAR rules. The third stage, if necessary, would be to amend the income tax law.

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In addition to being a Chartered Accountant, Company Secretary, Cost Accountant, MBA, Dip IFR (UK), Mr. Adukia also holds a Degree in Law and Diploma in Labor Laws. He has been involved in the activities of the Institute of Chartered Accountants of India (ICAI) since 1984 as a convenor of Kalbadevi CPE study circle. He was the Chairman of the Western Region of Institute of Chartered Accountants of India in 1997 and has been actively involved in various committees of ICAI. He became a member of the Central Council in 1998 and ever since he has worked tirelessly towards knowledge sharing, professional development and enhancing professional opportunities for members. He is a regular contributor to the various committees of the ICAI. He is currently the Chairman of Committee for Members in Industry and Internal Audit Standard Board of ICAI.

Mr. Adukia is a rank holder from Bombay University. He did his graduation from Sydenham College of Commerce & Economics. He received a Gold Medal for highest marks in Accountancy & Auditing in the Examination. He passed the Chartered Accountancy with 1st Rank in Inter CA & 6th Rank in Final CA, and 3rd Rank in Final Cost Accountancy Course in 1983. He started his practice as a Chartered Accountant on 1st July 1983, in the three decades following which he left no stone unturned, be it academic expertise or professional development. His level of knowledge, source of information, professional expertise spread across a wide range of subjects has made him a strong and sought after professional in every form of professional assignment.

He has been coordinating with various professional institutions, associations' universities, University Grants Commission and other educational institutions. Besides he has actively participated with accountability and standards-setting organizations in India and at the international level. He was a member of J.J. Irani committee which drafted Companies Bill 2008. He is also member of Secretarial Standards Board of ICSI. He represented ASSOCHAM as member of Cost Accounting Standards Board of ICWAI. He was a member of working group of Competition Commission of India, National Housing Bank, NABARD, RBI, CBI etc.

He has served on the Board of Directors in the capacity of independent director at BOI Asset management Co. Ltd, Bharat Sanchar Nigam Limited and SBI Mutual Funds Management Pvt Ltd. He was also a member of the London Fraud Investigation Team.

Mr. Rajkumar Adukia specializes in IFRS, Enterprise Risk Management, Internal Audit, Business Advisory and Planning, Commercial Law Compliance, XBRL, Labor Laws, Real Estate, Foreign Exchange Management, Insurance, Project Work, Carbon Credit, Taxation and Trusts. His clientele include large corporations, owner-managed companies, small manufacturers, service businesses, property management and construction, exporters and importers, and professionals. He has undertaken specific assignments on fraud investigation and reporting in the corporate sector and has developed background material on the same.

Based on his rich experience, he has written numerous articles on critical aspects of finance-accounting, auditing, taxation, valuation, public finance. His authoritative articles appear regularly in financial papers like Business India, Financial Express, Economic Times and other professional / business magazines. He has authored several accounting and auditing manuals. He has authored books on vast range of topics including IFRS, Internal Audit, Bank Audit, Green Audit, SEZ, CARO, PMLA, Antidumping, Income Tax Search, Survey and Seizure, Real Estate etc. His books are known for their practicality and for their proactive approaches to meeting practice needs.

Mr. Rajkumar is a frequent speaker on trade and finance at seminars and conferences organized by the Institute of Chartered Accountants of India, various Chambers of

Commerce, Income Tax Offices and other Professional Associations. He has also lectured at the S.P. Jain Institute of Management, Intensive Coaching Classes for Inter & Final CA students and Direct Taxes Regional Training Institute of CBDT. He also develops and delivers short courses, seminars and workshops on changes and opportunities in trade and finance. He has extensive experience as a speaker, moderator and panelist at workshops and conferences held for both students and professionals both nationally and internationally.. Mr. Adukia has delivered lectures abroad at forums of International Federation of Accountants and has travelled across countries for professional work.

Professional Association: *Mr. Rajkumar S Adukia with his well chartered approach towards professional assignments has explored every possible opportunity in the fields of business and profession. Interested professionals are welcome to share their thoughts in this regard.*