

GETTING READY FOR GENERAL ANTI AVOIDANCE RULES (GAAR)





WHAT IS GAAR?

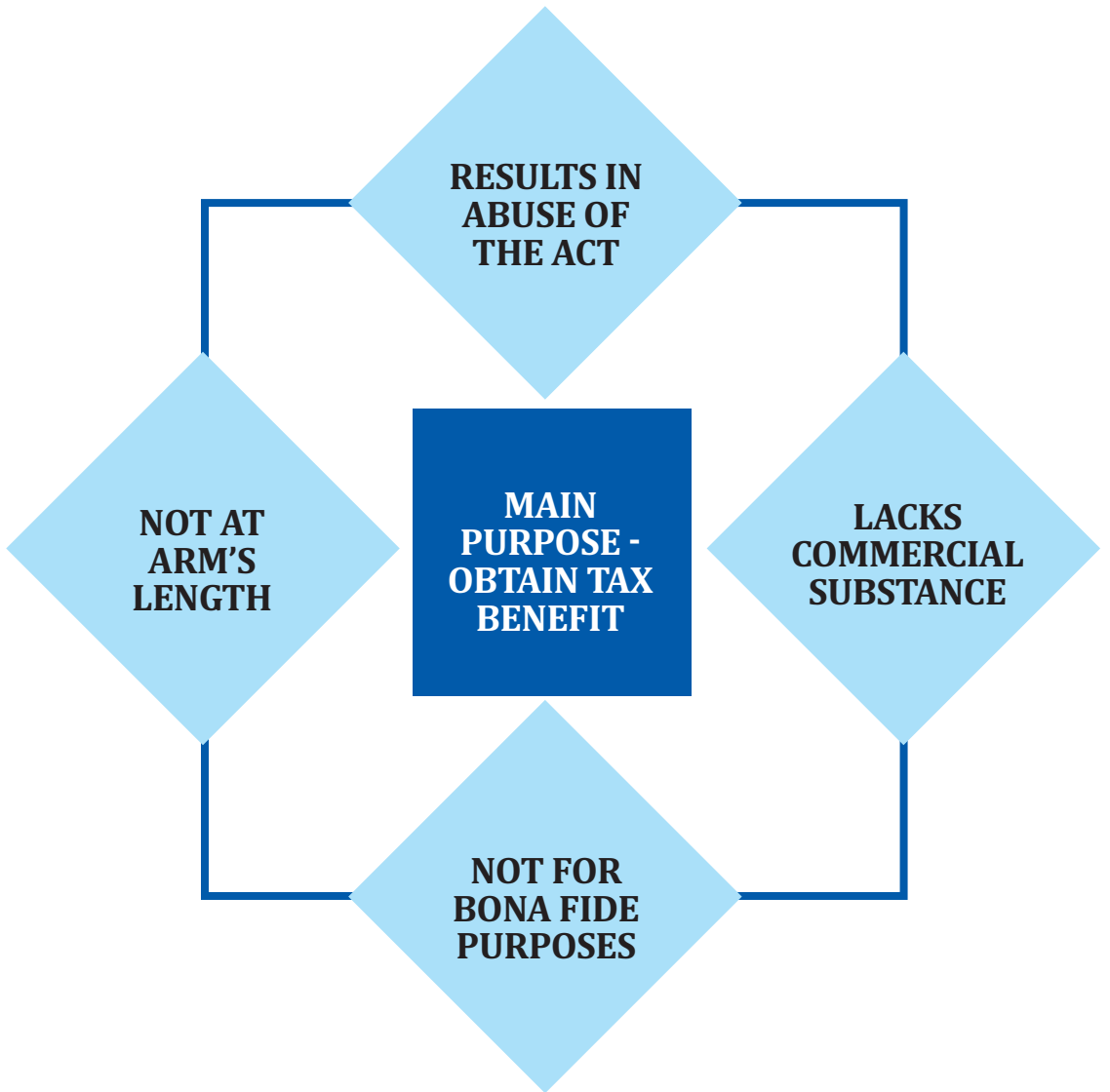
GAAR is a strong and presumptive anti-avoidance code. It seeks to examine a transaction i.e. an arrangement against a pre-defined set of conditions and to declare it as an Impermissible Avoidance Arrangement ("IAA"). Originally proposed in the Direct taxes code 2010, GAAR is targeted at arrangement or transactions made specifically to avoid taxes. After a number of delays on account of concerns of the taxpayers, GAAR is all set to come into force from April 1, 2017.

Under GAAR, the taxpayer is saddled with a burden of proof against a strong legal presumption. It allows tax officials to deny tax benefits, if a deal is found without any commercial purpose other than tax avoidance.

WHY GAAR?

General Anti Avoidance Rules (GAAR) provide extremely potent tools for the taxman to shoot down egregious arrangements made by taxpayers for lowering their tax liabilities. Several countries have codified GAAR in their tax statutes so as to check tax evasion by taxpayers. GAAR has been a part of the tax code of Canada since 1988, Australia since 1981, South Africa from 2006 and China from 2008. India has seen GAAR as a work in progress for the past few years and the Government has now shown its intent to bring it into force with effect from April 1, 2017.

WHEN CAN GAAR BE INVOKED?



WHAT CONSTITUTES A TAX BENEFIT

<ul style="list-style-type: none">• Reduction or avoidance or deferral of tax under the Act or as a result of a tax treaty	<ul style="list-style-type: none">• Increase in a refund of tax under the Act or as a result of a tax treaty; or	<ul style="list-style-type: none">• Reduction in income	<ul style="list-style-type: none">• Increase in loss
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Once an arrangement is classified as an IAA, the tax authorities can:

- Disregard / combine / re-characterize whole / part of the arrangement
- Treating IAA as void-ab-initio
- Disregard corporate structure
- Deeming connected and accommodating parties to be one
- Re-assign place of residence / situs of assets or transaction
- Re-allocate income, expenses, relief, etc.
- Re- characterize Equity- Debt, Income, Expenses, relief, etc.

As such, if any transaction / arrangement is hit by GAAR, the ramifications can be unpredictable. Given the fact that GAAR will be a subjective exercise on the part of the taxman, the fallout can be considerably detrimental to the taxpayer.

WHEN GAAR CANNOT BE INVOKED?

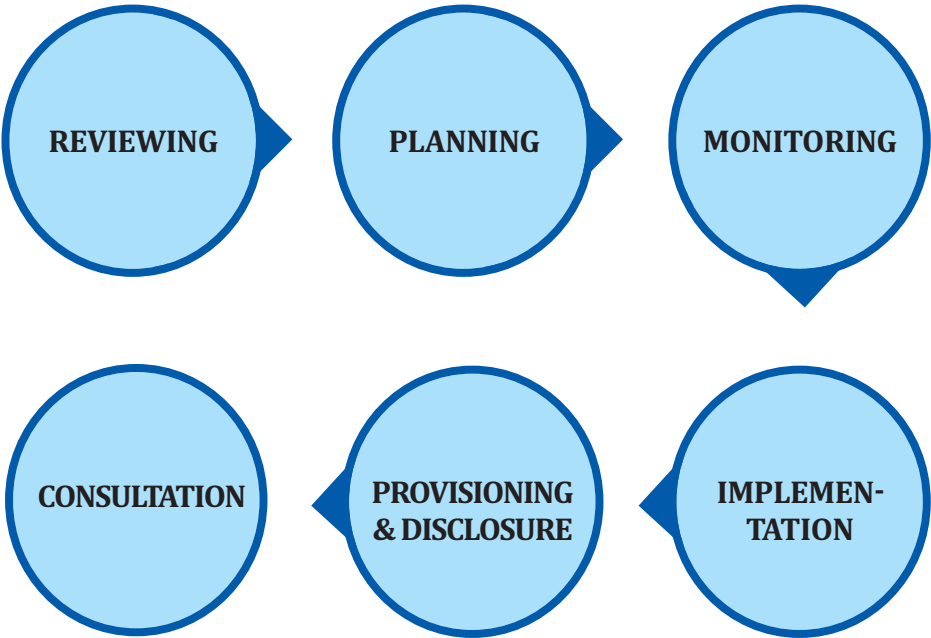
- Any arrangement where the aggregate tax benefit to all parties of the arrangement in the relevant tax year does not exceed INR 30m. The tax benefit would be computed with respect to reduction, deferral or avoidance of tax or with reference to an increase in the refund of tax. In case of an increase in loss, the tax benefit is the tax that would have been chargeable had such increased loss been the total income.
- Any income derived from the transfer of investments made prior to 1 April 2017 is protected from GAAR, but any arrangement that predates this could come under the tax department’s scanner if a tax benefit is claimed in a subsequent year.

GAAR OVERRIDES TAX TREATIES

The Act expressly provides that GAAR provisions would override Tax treaties. Section 100 contained in Chapter XA of the Act pertaining to the application of GAAR provisions provides that GAAR will apply in addition to, or in lieu of any other basis of taxation. Also Section 90(2A) and Section 90A(2A) provides that the provisions of Chapter XA of the Act shall apply to the taxpayer even if such provisions are not beneficial to him.

HOW NANGIA ADVISORS CAN HELP

How a corporation manages GAAR is typically dictated by its own overall risk appetite. We shall assist you in ensuring that your business activities are within your tolerable risk appetite, under the following key areas:



1. Reviewing

- Though under the grandfather provisions the current arrangements are out of the purview of GAAR, our team shall undertake a detailed analysis of the current structures and provide a report highlighting the areas which could trigger GAAR at the time of exit from the structure.

2. Planning

- Planning your taxes in a thoughtful manner, with practical steps taken through all stages of the tax life cycle to protect the business from a GAAR challenge.
- Analyzing alternatives as part of the planning approach, and maintain sufficient documentation to support the decisions taken.

3. Monitoring

- Continuously monitoring and factoring the GAAR developments into the corporation's tax life cycle.
- Making available detailed, up-to-date and accurate information so that transactions are measured against the rules.

4. Implementation

- Maintaining contemporaneous documentation in defending a company's position against a GAAR challenge.
- Making sure there are documents that set out the intended purpose of the overall transaction, as well as each step within the transaction, can significantly enhance a taxpayer's position in defending against such a challenge.

5. Provisioning and disclosure

- Recent years have seen a significant increase in a broad range of new information reporting and disclosure requirements for business taxpayers.
- In a post-BEPS world, OECD BEPS Action 13 ("Disclosure of aggressive tax planning arrangements") may result in new requirements for taxpayers to disclose certain arrangements.

6. Consultation

- Receiving an opinion on a GAAR regime should provide more than a mere reassurance that the position satisfies the technical requirements of the law.
- It can also affect the manner in which a position is disclosed in financial statements or to a revenue authority, as well as have a bearing on the imposition of penalties.



ABOUT US

Nangia Advisors is a premier professional services organization offering a diverse range of Taxation, Transaction Advisory and Business Consulting services. Nangia Advisors has presence currently in Noida, Gurgaon, Delhi, Mumbai, Dehradun and Singapore.

Quality of our people is the cornerstone of our ability to serve our clients. For this reason, we invest tremendous resources in identifying exceptional people, developing their skills, and creating an environment that fosters their growth as leaders. From our newest staff members through senior partners, exceptional client service represents a dedication to going above and beyond expectations in every working relationship.

We strive to develop a detailed understanding of our clients' business and industry sector to offer insights on market developments and assist our clients develop effective strategies and business models. We have the resources and experience necessary to anticipate and competently serve our clients on issues pertaining to all facets of Tax and Transaction Advisory. We take pride in our ability to provide definite advice to our clients with the shortest turnaround time.

The business and tax landscapes have changed dramatically, and the pace and complexity of change continues to increase. We can assist you navigate this shifting landscape.

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