



Institute for Austrian and
International Tax Law **Vienna**

**DIBT / Doctoral Program in
International Business Taxation**



SLIDES

"General Anti-Avoidance Rules (GAARs) – A Key Element of Tax Systems in the Post-BEPS Tax World?"

03.07 - 05.07.2014, Rust, Austria



Session: 1.1

The role of GAARs

Purpose

1. cover legislative cowardice
2. cover legislative and administrative incompetence

Effects

1. abandon principles of international law
2. replace rule of law with rule of executive discretion

Session: 1.2



OXFORD LAW

General Anti-Avoidance Rules (GAARs) – A Key Element of Tax Systems in the Post-BEPS Tax World

UK Statutory General Anti-Abuse Rule 2013-Input Statement

Judith Freedman, Pinsent Masons Professor of Tax Law, Oxford University and Oxford Centre for Business Taxation, Rust Conference, July 4th 2014

Why did the UK introduce a statutory GAAR in 2013?

- **Political pressure on Coalition Government post global financial crisis (but pre BEPS). 2011 Aaronson Study Group recommends moderate, targeted anti-*abuse* rule. Why?**
 1. To deter 'contrived and artificial schemes'
 2. To provide level playing field for business
 3. To reduce uncertainty surrounding case law
 - Is the Ramsay judicial doctrine dead?
 - Is ordinary purposive interpretation enough or is there a special rule of interpretation for tax?
 - Stretching of case law – legitimacy issues.
 - Taxpayer successes where technical legislation lacks clear underlying intent.
 4. To reduce need for specific remedial legislation (maybe only in future)– i.e. reduce complexity and length of legislation?
 5. To help clarify boundaries between acceptable and unacceptable behaviours and inform public debate.

Session: 1.3

Input Statement: New Zealand What can be learned from countries with a GAAR for over 100 years?

- Nearly all NZ revenue statutes have incorporated some form of GAAR – over 100 years.
- Designed to address tax avoidance without the need to rely on specific SAARs or having to identify how tax avoidance could occur. Makes tax laws more robust.
- Heavy reliance upon the Courts to ultimately decide what is tax avoidance under a GAAR.
- The GAARs are flexible enough to deal with tax avoidance schemes which might be designed at some future point but the downside is the uncertainty that results especially how the Courts will apply the provision.
- NZ's GAAR has stood the test of time but at the same time given rise to considerable uncertainty and changing judicial positions as to the appropriate way to apply the GAAR.

Session: 1.4



The (un)constitutionality of GAAR

GAARs - an emerging trend in the tax landscape and in the political debate of many countries

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Rust, 4-5 July 2014

2004: GAAR declared unconstitutional

- The Constitutional Tribunal ruling of 11.05.2004, K 4/03
 - the right to choose the route of lesser taxation
 - the idea of GAAR generally accepted – but not its implementation
 - **legal certainty considerations**
 - no reference to the principle of equality
- Chasing the ideal of certainty
 - should it be sought in this case?
 - is it attainable without losing all effectiveness?
- The GAAR was neither better nor worse than its equivalents in other countries
 - e.g. „other significant benefits”

2014: GAAR revisited



- Reintroduction of the GAAR under way (MF's guidelines)
- **concern to address (past, potential?) CT's objections**
- a number of elaborate but **imprecise or ill-constructed definitions**
- as a result, envisaged regulation overcomplicated
- Legal certainty not guaranteed → the very same objections apply
- „Swiss cheese” – gates open to further tax avoidance → effectiveness of the GAAR enfeebled
- The GAAR likely to survive the CT's scrutiny

1. **Should the usual standard of legal certainty be expected of the (wording of) GAAR?**
2. **Can constitutional standards change within a decade?**

Thank you for your attention!



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- dr Hanna Filipczyk: hannapatrycja@wp.pl



Session: 1.5

Attempts to Introduce a GAAR Mexico



- Recent attempts in 2006 and 2014
- Federal tax code – GAAR applicable to all taxes
- 2014 – Executive Reform package in line with BEPS (GAAR and various SAARs)
 - GAAR focused on *"lack of business purpose"*
- Legislative Branch favors judicial construction rather than legislation.

Session: 2.1

Threshold test

- “economic substance” vs. anti-avoidance recharacterization of transaction
- both are based on myths
- both ultimately rely on subjective purpose for a small element of a commercial transaction

Session: 2.2

Elements of tax veiling



1. Legal form: tax law must have defined the taxable event based on the forms and appearances as determined by private law

2. Economic result: aimed by the taxpayer, leaves the scope of taxation under the disguise of a different legal form – a tax advantage

3. Abuse of a legal form: use of legal form must be abusive – artificial, extraordinary, unnecessarily complex, difficult to comprehend, irrational.

A reasonable relationship between the chosen form and the intended economic result? Any commercial objective unrelated to tax?

4. Intention to abuse: an inquiry into the will of the taxpayer

Session: 2.3

Requirement for the application of GAARs

Dr. Borbála Kolozs
Corvinus University of Budapest

Case Legf. Bír. Kfv. V. 35.186/2009.

- Taxpayer signs a contract to sell a property for 350 million to buyer A
- Buyer B offers 3,5 billion
- Taxpayer breaches the contract and sells the property to buyer B
- Buyer A sues the taxpayer for 3,5 billion
- Taxpayer pays (?) 3,5 billion to buyer A and lowers its pre-tax profit accordingly

Session: 2.4



Karlstad Business School
Handelshögskolan vid Karlstads universitet

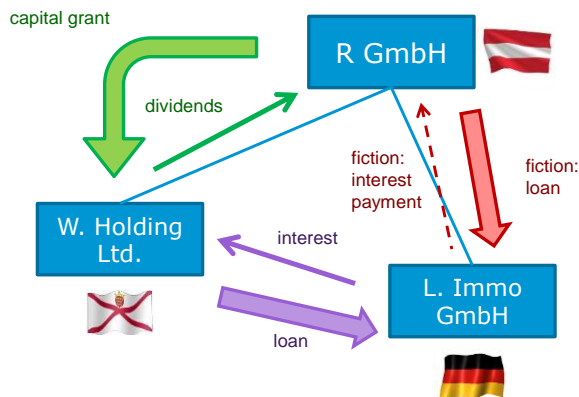
The application of GAARs in the Swedish Tax Court System

- **The Supreme Administrative Court** **The Supreme Administrative Court**
- **(Högsta Förvaltningsdomstolen)**
- **Administrative Courts of Appeal (4)** **The Advanced Rulings Board**
- **(Kammarrätter)** **(Skatterättsnämnden)**
- **Administrative Courts (12)**
- **(Förvaltningsrätter)**
- **Tax Authority**

Session: 3.1

Legal consequences of applying GAARs – Austrian case (VwGH)

- VwGH 22.9.2005, 2001/14/0188



- "Außentheorie": real facts and circumstances are replaced by fictional appropriate record → scope can be very wide
- Which – of a number of possible – fictions shall be applied?
- VwGH: loan directly to L. Immo GmbH
- Other possible fiction: capital grant to L. Immo GmbH

Session: 3.2

GAARs – A KEY ELEMENT OF TAX SYSTEMS IN THE POST - BEPS TAX WORLD? THE SOUTH AFRICAN REPORT

Prof Annet Wanyana Oguttu
College of Law
University of South Africa



LEGAL CONSEQUENCES OF APPLYING THE GAAR IN SA (SEC 80B ITA)

- Previous GAAR: CSARS had to be “satisfied” all GAAR elements present
 - Current GAAR: No mention of “satisfied”: Just consequences of impermissible tax avoidance - to protect SA’s tax base
- ❖ General remedy: CSARS may determine the tax consequences as if transaction had not been entered into or as he deems fit to prevent the tax benefit - s 80B(1)(f)
 - Akin to UK “fiscal nullity” - *WT Ramsay Ltd v IRC*
 - General remedy also applied in previous GAAR
 - Challenge: Previous GAAR - where nullification resulted in a disallowance of a deduction, it left a vacuum as far as giving rise to a tax liability
 - ❖ Current GAAR, additional remedies fill vacuum – s 80B(1)(a)-(e) , CSARS may:
 - Disregard, combine, re-characterise any steps or parts of the impermissible avoidance arrangement;
 - Disregard any accommodating or tax-indifferent party or treat the same as one and the same person;
 - Deem connected persons to be one and the same person in determining tax treatment of any amount;
 - Reallocate gross income, receipt/accrual of a capital nature, expenditure or rebate among the parties;
 - Re-characterise any gross income, receipt or accrual of a capital nature or expenditure.
 - Challenge: GAAR is not a charging provision - if a receipt or accrual is re-characterised as revenue instead of capital in nature - may be creating tax liability different from charging provisions of the Act
 - ❖ CSARS - make necessary & appropriate compensating adjustments to ensure consistent treatment of parties to the arrangement (s 80B)(2):
 - Subject to limitation periods of issuing assessments and raising objections - ss 99, 100, 104(5)(b) TAA

THANK YOU



Session: 3.3

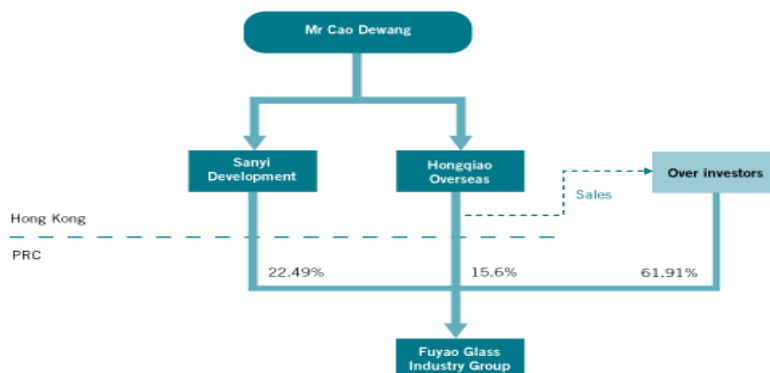
Legal Consequences of Applying GAARs - China

Chinese tax authorities have the power to make an adjustment through "a reasonable method" :

- re-characterization of taxpayer's business arrangements based on economic substance;
- disregard of legal status of company; or/and
- deny of tax benefits obtained from the tax avoidance arrangement.

Example

FUZHOU CASE



Session: 3.4

Legal Consequences of Applying GAARs

“a finding of abusive practice must not lead to a penalty, for which a clear and unambiguous legal basis would be necessary”

(ECJ, 21 February 2006, *Halifax*, Case C-255/02, par. 93)

In Italy, tax assessment based on:

- (i) the (semi-)general anti-avoidance rule (art. 37-*bis* of Decree no. 600/1997)
effect: administrative fine for unfaithful tax return
ratio: reasonable predictability
- (ii) the general unwritten anti-abuse principle developed by Courts
effect: NO fine is applicable
ratio: breach of principle of legal certainty

Reference: Italian Supreme Court of Cassation, 30-11-2011, case no. 25537

Session: 4.1

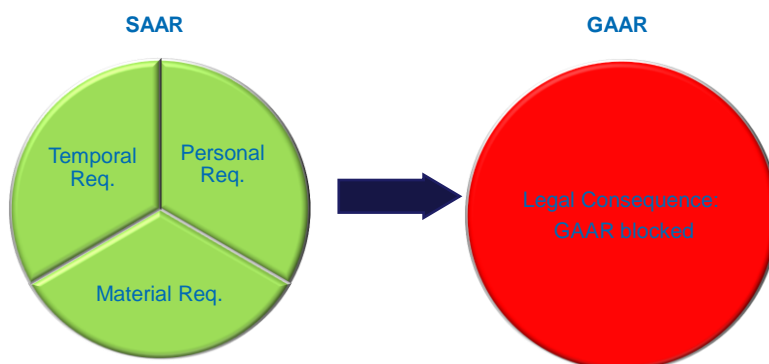
The Relationship between SAARs and GAARs

Prof. Dr. Klaus-Dieter Drüen
Heinrich-Heine-University Düsseldorf

General Anti-Avoidance Rules (GAARs)
Rust Conference, July 3-5, 2014

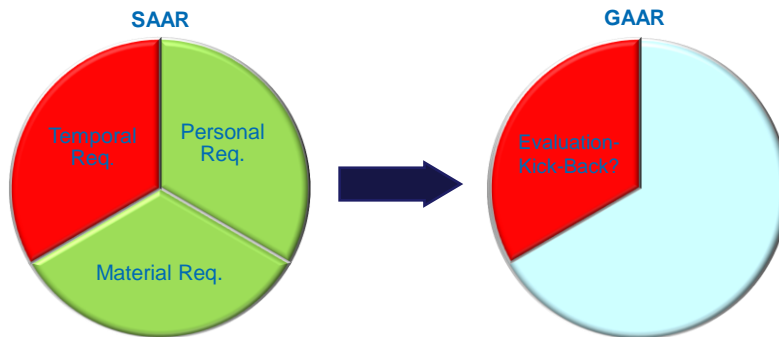
GAAR and SAARs: Basic Methodological Questions

I. Rule of Conflict: *lex specialis derogat legi generali*



§ 42 I 2 GGTC: Where the element of an individual tax law's provision to prevent circumventions of tax has been fulfilled, the legal consequences shall be determined pursuant to that provision.

II. Restrictive Effect of SAARs?

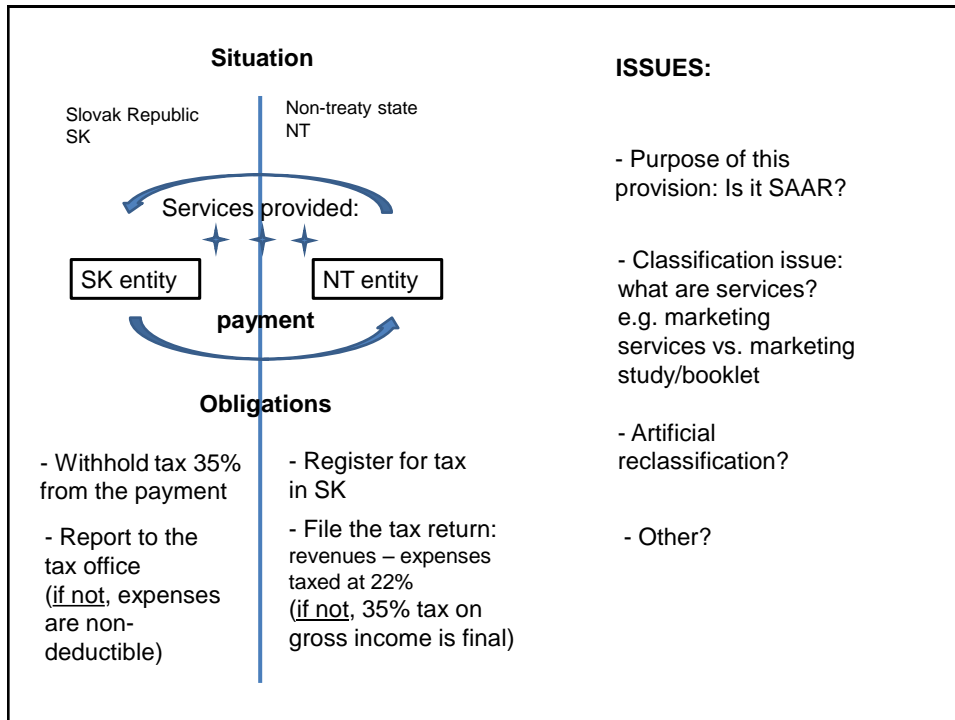


§ 42 I 3 GGTC: Where this is not the case, the tax claim shall in the event of an abuse within the meaning of subsection (2) arise in the same manner as it arises through the use of legal options **appropriate** to the economic transactions concerned.

III. Cumulative Application of SAAR and GAAR

- ▶ GAAR remains applicable:
 1. If the SAAR is not exclusive (Question of Interpretation)
 2. In Cases of Abuse of the SAAR

Session: 4.2



Session: 4.3

GAARs and SAARs

PROF. DR. JUAN ZORNOZA
 DR. ANDRÉS BÁEZ
 UNIVERSIDAD CARLOS III DE MADRID
 (SPAIN)



GAARS and SAARs

- Proper vs Improper (sectorial SAARs)
- Conflicts.
 - SAAR and GAAR both applicable
 - ✦ *Lex specialis derogat generali.*
 - *But concerns on sectorial GAARs*
 - SAAR not applicable
 - ✦ “At the edge of the cliff situations” (2,99 Ratio)
 - GAAR APPLICABLE (but implicit legal valuation of abuse?)
 - Artificial avoidance or capture of a SAAR: GAAR applicable
 - SAAR not applicable at all (e.g. European transactions)
 - GAAR applicable (but...SAARs through the backdoor?)

Session: 4.4

GAAR and SAAR in Russia

Vladimir Tyutyuryukov, CSc.
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KIMEP University
Deputy Director, CATRC
Member of IFA



4 July 2014

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Extract from report

- When the Russian tax authorities **apply GAARs**, it is **technically simpler for them** to deny the full amount of the particular deductions by claiming them “unjustified” (even if later the court finds that the deductions are actually justified). It requires quite **extensive analysis to apply SAARs instead**.
- At the same time Russian tax law does not contain any direct statement that one type of anti-avoidance rules should prevail over another, so **they may be applied along each other**. The important detail is the amount of additional accrual of the tax: the tax authorities should decide in each case, what anti-avoidance rule is applicable and recalculate the tax accordingly, so it is **not possible to apply both GAARs and SAAR to a particular situation simultaneously**.

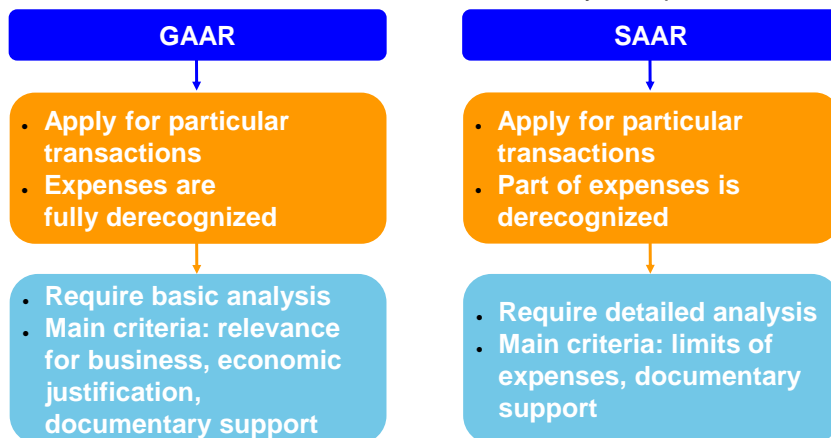
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Russian GAAR explained

- Judicial concept of GAAR:
 - no connection of tax benefit with real entrepreneurial activity;
 - form and substance of transaction do not match;
 - no business reason for transactions;
 - recognized transactions are technically impossible.
- General deductibility criteria:
 - expenses should be economically justified;
 - expenses should have monetary value;
 - expenses should be supported with due documents.

GAAR or SAAR?

- Tax disputes involve either GAAR or SAAR
- In most cases tax authorities denied deductibility of expenses



- Tax authorities often failed to comply with SAAR provisions



Thank you!

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Session: 5.1

Canada's new Anti-Treaty-Shopping SAAR?

Martha O'Brien
Faculty of Law, University of Victoria

Proposed solution to a GAAR that is ineffective in preventing treaty-shopping

- Proposal to amend domestic law to add a general anti-treaty shopping rule, likely in the *Income Tax Conventions Interpretation Act*. Breadth of potential application prevails over certainty.
- Budget 2013 announcement, subsequent public consultation and statement of the form the new rule will take in Budget 2014. No draft legislation released. BEPS project explicitly referred to.
- General rule: Treaty benefits will be denied where **one of the main purposes** of a transaction (or series) is to obtain treaty benefits.
- Rebuttable presumption that a **conduit** structure has a main purpose to obtain treaty benefits.
- **Safe harbour** i. for active business income earned in a treaty country; ii. where taxpayer is not controlled by a person who would not be entitled to equivalent treaty benefits if the person received the income directly; **or** iii. taxpayer is publicly traded corporation or trust.
- Treaty benefits may be granted even where main purpose is to obtain treaty benefits if reasonable in the circumstances.
- Series of examples provided by Finance; intent to overrule existing GAAR, beneficial ownership case law is clear.

Session: 5.3

The Relation between the Swiss GAAR and DTCs

- The Swiss GAAR as an unwritten principle.
- Assumption of a fictitious fact pattern.
- Reservation in a few DTCs (and the savings agreement) according to which the treaty shall not restrict the contracting states in applying domestic unilateral provisions required for the prevention of avoidance or evasion (see e.g. art 23 [1] of the DTC with Germany).
- Para 22.1 OECD comm.: "Such rules are part of the basic domestic rules set by domestic tax laws for determining which facts give rise to a tax liability; these rules are not addressed in tax treaties and are therefore not affected by them."
- Para 27.9 OECD comm.: "With respect to para 22.1 Switzerland believes that domestic tax rules on abuse of tax conventions must conform to the general provisions of tax conventions."
- **Is the Swiss GAAR applicable in a treaty context if such a reservation exists?**
- Domestic allocation of income or rule on abuse in the sense of para 27.9 of the OECD comm.?
- Examples: Sale of a shelf company resident in Switzerland by an individual resident in Germany?

Session: 5.4



Faculty
of Business
and Economics

July 5, 2014, Rust

GAARs and Tax Treaties

Danuše Nerudová, Lukáš Moravec
Department of Accounting and Taxation



- Preferred SAARs to GAARs
- Application rules observed from practice and case law
- GAARs applied in situation when the case cannot be captured by SAARs
- SAARs mainly LOB clauses
- Domestic GAAR applied on tax treaty situation
- Court slightly indicated that GAAR only determines the fact on which tax liability is based and therefore there is no conflict with DTT

Session: 6.1

The notion of abuse in the Internal market (genuine vs. artificial economic activities).

Prof. Edoardo Traversa
UC Louvain/WU Vienna
Rust, 5 July 2014

- 1. Origin of abuse in EU law : truly judicial?
 - “Acts which are established to have as their purpose the obtaining of an advantage contrary to the objectives of the Community law applicable in the case by artificially creating the conditions required for obtaining that advantage shall result, as the case shall be, either in failure to obtain the advantage or in its withdrawal” (Article 4(3) of Council Regulation n°2988/95 on the Protection of the European Communities financial interests)
 - Influence on *Emsland-Stärke* C-110/99 [2000]
- 2. Artificiality in relation to Abuse: synonym or synecdoche?
 - Tendency to use artificiality instead of abuse (se AG Kokott, 13 March 2014, *Nordea*, C-48/13, para. 58)
 - Relevance of the arm’s length principle
 - Role of the legal form (DFDS, C-260/95; Planzer; C-73/06 ; Newey C-653/11, para. 46)

3. Genuine cross-border activities : a matter of purpose (of EU market integration)

- Regulatory (tax) competition vs. regulatory (tax) neutrality
- Meaning of "right to tax profits generated by activities undertaken in the national territory"?
 - See Thin Cap GLO C-524/04, SIAT C-318/10, Itelcar C-282/12 and comp. with Centros C-212/97 (non tax)

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"It says 'An honest product from an honest company . . . 100% artificial'."

Session: 6.2

Application of Domestic Law GAARs in Cross-border Intra-EU Situations

Professor Marjaana Helminen
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- Do GAARs Restrict TFEU Freedoms?

=> problem if applied to arrangements which are possible only in cross-border situations or which are typical only in cross-border situation

- When does tax avoidance justify?

=> wholly artificial tax avoidance arrangement which lacks economic reality

- taxpayer must be given the possibility to show non-tax reasons

- "Wholly artificial tax avoidance arrangement" v. "it is obvious that an arrangement was made in order to avoid tax" => high threshold for application

Session: 6.3



Are national GAARs reviewable against the Freedoms?

- GAAR in ATP Rec: the text does **not** draw a **distinction** between purely domestic and cross-border situations.
- The **domestic equivalent** to a number of cross-border artificial schemes (e.g. conduit company, back-to-back loans) would not fall within the GAAR – **absence of 'purpose to avoid tax'**.
- A restriction would emerge from the **functioning of the GAAR in practice** if the following set of facts occurred:
 1. The GAAR applied to arrangements with a cross-border dimension within the EU; and
 2. The same facts would not trigger the application of the GAAR in a purely domestic context; and
 3. The arrangement(s) under scrutiny would meet the requirements for artificiality and for having the essential purpose of avoiding tax and would also lead to a tax benefit.

Session: 6.4

Session 6.4.

VI) GAARs and European Union Law Requirements - Croatia -

Saturday July 5, 11:00 – 12:30

chair: Prof. Pistone

Reporters:

Gadžo, Klemenčić, Hodžić, Žunić Kovačević

Dilemma's for Croatian solution

- A relatively new tax system - an imperative to avoid unnecessary complexity and “tax rule madness”, introducing ever more SAARs as the legislator becomes aware of the new avoidance techniques
- Croatian tax system lacks a coherent approach to tax avoidance
- Although multiple SAARs do exist, Croatian tax system lacks a GAAR – there is an opposing opinion – that a GAAR is in fact in operation in Croatia – the argument – misconceived in our view – is grounded on the interpretation of the so-called “economic approach principle”
- GAAR can play the role of a fundamental tax principle underpinned by specific rules (SAARs), thus creating a coherent legislative anti-avoidance framework
- In the view of latest developments on the EU and international level – should we recommend and follow the tax avoidance concept delimited by the ECJ that could serve as an appropriate interpretative guideline to the Tax Administration and the judiciary?
- We share the view that a GAAR – under certain conditions – can actually enhance the legal certainty rather than work to its detriment
 - *„In applying a national GAAR in the EU context member states must adhere to the tax avoidance concept delimited by the ECJ, even if the result is the narrowing down of the GAAR's scope of application . Key ECJ's decisions on the **interaction between EU law and national anti-avoidance legislation** seem to have passed **largely unnoticed by the stakeholders in Croatia**, with several academic contributions being a notable exception. Most importantly, it has been virtually ignored by the Ministry of Finance, a key player in the shaping of Croatian tax policy . Whether the dire straits of Croatian public finances – currently undergoing the surveillance process by the EU institutions – will provide an impetus for a more comprehensive approach to tax avoidance, including the introduction of a GAAR, remains to be seen.”*

Session: 7.1



Can we have an EU GAAR?

An EU GAAR as a 'common EU defence against tax avoidance' in the light of the Principle of Conferral (Article 5(1)&(2) TEU):

1. GAARs are **procedural rules** which usually **apply horizontally** to the entire array of substantive tax provisions.
2. EU law instruments in taxation only touch upon **specifically delineated themes** with a cross-border dimension (e.g. Parent-Subsidiary and Interest & Royalties Directives).
3. **How** can we **incorporate a GAAR**, in the form of a legally binding EU law instrument, into the EU legal order? Do we possibly need to limit its impact on specific instruments of substantive EU tax law?
4. The specific case of the GAAR in the ATP Rec and the proposed anti-abuse clause for the amended PSD.

Session: 7.2

GAARs and Recent European Developments

*'The **recommendation** does not address the issue of member states which already have a GAAR'*

- **Recommendation versus Law?**
 - How does this fit within the standard dictum of the **Court of Justice of the EU?**
 - **Domestic law** versus **EU Law?**
 - **Double Tax Treaties – Existing** versus **New Treaties?**

Aim: A better functioning of the internal market?

Session: 7.3



Erasmus School of Law

General Anti-Avoidance Rules (GAARs) – A Key Element of Tax Systems in the Post-BEPS Tax World?
Dutch Resistance against the GAAR in originally proposed amendment of Parent Subsidiary Directive (PSD)

Rust Conference 2014
 Session 7.3, Saturday July 5, 14:00 – 15:30
 Improved International Cooperation

Prof. dr. Sigrid Hemels
 hemels@law.eur.nl




Erasmus School of Law

Dutch Government does not support GAAR in PSD

Reasons:

1. Wording too general and subjective: risk of different interpretations of different member states (example: “reasonable business conduct”) → legal uncertainty and advisory costs for bona fide businesses
2. Dutch responsibilities to combat tax evasion shift to EU: less effective and flexible in combat of new abuse.
 - Since 1926 application of *fraus legis* in the Netherlands: not a statutory GAAR, but case law: very flexible.
 - Various Dutch SAARs which combat abuse of the participation exemption (allowed under the proposed PSD?) and anti-abuse provisions in several Dutch tax treaties.
- 6 May 2014 Ecofin decided to exclude GAAR from the Updated Proposal.



Session: 7.4

GAARs

A Key Element of Tax Systems in the Post-BEPS Tax World?

Ingebjørg Vamråk Dobrovolskis, Norwegian School of Economics

NHH



VII) GAARs and recent European Developments

In my view the **Commission Recommendation is very well drafted**. There are three main reasons behind that opinion:

- The first concerns the autonomous phrasing
- The second concerns the drafting technique
- The third reason concerns the fact that certain structures or typical ways to circumvent the rules are provided as examples of what should be taken into consideration when applying the GAAR

For the reasons pointed out above I believe that the Commission Recommendation may possess the necessary features for becoming a significant first step in the direction of a globalized GAAR.



CEMS



Session: 8.1

Alternatives to GAARs

Prof. Dr. Luís Eduardo Schoueri



Is a GAAR preferable to SAARs?



- The uncertainty of a GAAR **is no worse** than the absence of a GAAR
 - GAAR forces courts to adopt **similar arguments**
 - **Equality** and **legal certainty**
- Comparing GAAR to SAARs...
 - **SAARS** are a **preferable solution**
 - Legal systems based on the Principle of Legality
 - When SAAR is applied, there should be **no room left for a residual GAAR**





THANK YOU!

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Session: 8.2



Alternatives to GAAR

- GAAR seeks to codify provides a broad set of provisions which grants powers to authorities to invalidate any arrangement for tax purposes treating it as “impermissible avoidance agreement”, if the main purpose or one of the main purposes of the arrangement/structure is to obtain a “tax benefit
- Substance over form - the strength of Indian Judiciary lies in case-to-case adjudication - which doctrine would prevail in a given case must be decided in the lights of fact and circumstances of the case. There is no straight jacket formula for applying the above two doctrines and is applied on a case-to-case basis.
- SAAR introduced from time to time to counter cases where form had prevailed.
- Concept like substance over form too might be exploited by the tax payers as in many cases it is possible to “create” substance just enough to take advantage of a specific LOB in DTAA/ SAAR
- SAAR is more often than not reactive in nature rather than proactive

Session: 8.3

VIII) Alternatives to GAARs

Abuse of Law Interpretation Consequences

Lukas Moravec, Danuse Nerudova

Rust 2014

Long-term principles

- Continental law – „wording“ of Czech law.
- Art. 8 (3) of the Tax Order: *“The tax authority takes into account the actual content of the legal act or other facts relevant for tax administration”*.
- GAARs expressed as abuse of law fight.

Trend

- Abuse of law formulated by the Supreme Administrative Court cases.
- SAC recognizes the „abuse of law principle“ as the last rule to be applied (vs. tax administration interpretation).

New Civil Code 2014 – private law:

- Article 13: Everyone can have reasonable expectations of the same decisions of courts relating similar issues – courts position strengthened.
- Article 2: Meaning above wording – anti-abuse law trend supported.
- NCC Article 8: Abuse of law – impact on rights of the participants.
 - General principles of Civil Code to be applied in public law as well (expected law construction).
- BEPS form of application being discussed without clear final approach – abuse of law fight intensification one of alternatives:
 - Current purposive proposal to extend the abuse of law frame formulated by courts: Preparation of tax evasion should be a crime at the moment of preparation tax fraud.

Session: 8.4

Alternatives to GAAR in Korea

Hyejung Byun / Soojin Park

- ◆ Any general anti-avoidance rules *per se* have not been introduced in Korean domestic tax laws particularly designed to combat only tax avoidance cases.
- ◆ Alternatives in Korea?
 - ◆ Substance-over-form provisions,
 - ◆ Step transaction doctrine, and
 - ◆ A number of special anti-tax avoidance provisions exist.
- ◆ How do alternatives work?
 - ◆ The courts have ruled that the substance-over-form provisions are insufficient to provide objective and reasonable criteria to regulate tax avoidance cases.
- ◆ Need introduce new GAARs in Korea?