

## **Put the onus on tax authority to demonstrate tax benefit**

The GAAR guidelines should make it clear that it should be only used as a deterrent against tax avoidance schemes, and not a revenue gathering weapon in the hands of the tax officer. Accordingly, the guidelines should make it explicit that GAAR will be applicable only to artificial, abusive and contrived arrangements for the main purpose of avoidance of taxes.

Further, taking a cue from the Dr Shome Committee, it would be advisable to prescribe situations in which GAAR ought not to apply and create a negative list of non-applicability of GAAR items. For instance, when the taxpayer selects one of the possible options available to it under the law, like purchase v/s lease of asset, setting up a unit in SEZ, funding through debt or equity, and so on, GAAR should not be applicable. Similarly, in my view, tax litigation through use of available tax incentives should be clearly distinguished from tax avoidance and should be kept out of the purview of GAAR.

It is also vital that the government gives clarity on the non-applicability of GAAR when a special anti-avoidance rule is already applicable to a particular transaction, for example, in the context of the Double Tax Avoidance Agreement with Singapore, which provides for a specific anti-avoidance condition for the applicability of the treaty. In the interest of providing certainty, it is thus imperative that the government clarifies that GAAR will not apply once the specific anti-avoidance rule in the treaty is complied with by the taxpayer.

The government must also clarify that the onus is on the tax authorities to demonstrate that the main purpose of a respective business arrangement is to obtain tax benefit. The tax authority has to first discharge this onus with reference to the overall arrangement and the taxpayer should then get an opportunity to rebut the contention of the tax authority. In other words, it should not be a case where the practical application of GAAR results in a situation where the taxpayer is considered 'guilty until proved innocent'. This assurance is extremely critical to give comfort to taxpayers that GAAR will be used selectively in deserving cases only after the tax authorities have garnered enough factual evidence to support their case for existence of tax avoidance.

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