

CT LAW - UAE'S ANTI-ABUSE FRAMEWORK: WHAT YOU NEED TO KNOW

Swipe



CONCEPT AND RATIONALE



Legitimate tax planning is within the framework of law



A tax-saving motive alone does not invalidate bona fide transactions



However, the law abhors transactions that are a colourable device or sham



Over time, aggressive tax planning with colourable devices has raised concern amongst the tax authorities worldwide



CONCEPT AND RATIONALE



THIS LED TO THE INTRODUCTION OF GENERAL ANTI ABUSE RULES (GAAR)

GAAR generally empowers the Tax Authority in a country to deny tax benefit of transactions or arrangements which do not have any commercial substance, and the main purpose of such a transaction is achieving a tax benefit.



TYPES OF ANTI ABUSE RULES IN UAE CORPORATE TAX LAW



1.



SPECIFIC ANTI ABUSE RULES (SAAR)

Specific rules targeted at specific arrangements

E.g. Interest limitation rules, Related party payment rules, limitation on loss c/f rules etc.

2.



GENERAL ANTI ABUSE RULES (GAAR)

General rules following substance over form principle

Article 50 empowers authority to take action against tax abuse in a defined set of circumstances

WHEN CAN GAAR IN UAE BE INVOKED...



NO COMMERCIAL OR ECONOMIC SUBSTANCE



THE MAIN PURPOSE OF THE ARRANGEMENT IS TO **OBTAIN A TAX BENEFIT** NOT CONSISTENT WITH THE INTENTION OF LAW

Please do note: These provisions can apply when a Person enters into a transaction or arrangement if the main purpose (or one of the main purposes) of the transaction or arrangement is to allow another Person to obtain a tax benefit. In other words, the Person who has the requisite purpose and the Person who obtained the tax benefit need not be the same Person.

WHAT CONSTITUTES TAX BENEFIT?



A refund or an increased refund of Corporate Tax



Avoidance of an obligation to deduct or account for Corporate Tax



Deferral of a payment or advancement of a refund of Corporate Tax



Avoidance or reduction of Corporate Tax Payable

GAAR CONSEQUENCES...



DURING AN AUDIT, TAX AUTHORITIES CAN:



Allow or disallow any exemption, deduction, or relief in tax computation



Allocate exemption, deduction or relief, or any part thereof, to any other Persons



Recharacterize the nature of any payment or other amount, or any part thereof



Disregard the effect that would otherwise result from the application of other provisions



Can make compensating adjustments to the Corporate Tax liability of any other person affected

GAAR IS BROADER THAN TRANSFER PRICING AND BEPS



While invoking GAAR, authorities are required to consider all relevant circumstances and facts



The onus is on the authorities -determination on just and reasonable grounds



While the introduction of GAAR has created a lot of anxiety amongst the taxpaying community, GAAR implementation by tax authorities will determine its impact



If used selectively to shield the tax base, GAAR can prove to be an effective deterrent against abusive tax avoidance



Taxpayers must demonstrate that transactions have genuine commercial and economic substance and not solely undertaken for tax avoidance purposes



Comprehensive defense documentation explaining the commercial rationale behind transactions is essential

PARTING THOUGHTS



The "Look at" approach is no longer valid; focus on explaining the reasons behind actions



Obtaining tax benefit cannot constitute a legitimate reason



Validate the intention behind the transactions/arrangements



Assess commercial objectives through alternative scenarios



The purpose should be substantiated with adequate substance



OUR TEAM



Nimish Goel
Partner



K Venkatachalam
Partner



Hany Elnaggar
Associate Partner



Kapil Bhatnagar
Associate Partner



Anna Nikolaiko
Senior Manager



Harpal Chudasama
Senior Manager

CONTACT US



WTS Dhruva Consultants

207, Emaar Square, Building 4,
PO Box 127165, Dubai, UAE

1905, Addax Tower, City of Lights,
Al Reem Island, Abu Dhabi, UAE



Email: corporatetax@dhruvaadvisors.com



Website: <https://www.wts-dhruva.com/>

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