



THE WESTERN INDIA REGIONAL COUNCIL OF THE
INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

Overview of GAAR and PPT

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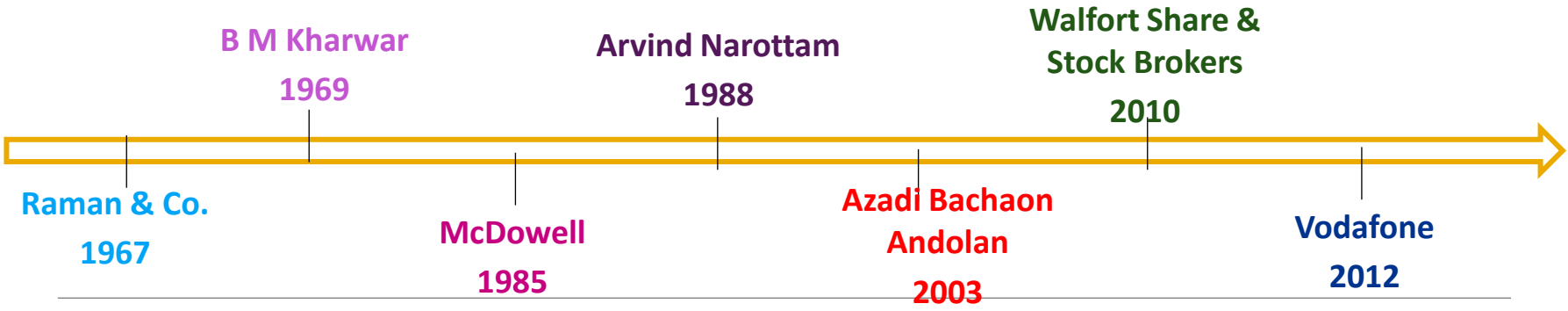
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Tax Mitigation v. Tax Avoidance v. Tax Evasion

Tax Mitigation	Tax Avoidance	Tax Evasion
<ul style="list-style-type: none"> • Situation where taxpayer uses a fiscal incentive under the tax legislation by fulfilling the conditions and economic consequences thereof • Example – Setting up a unit in a SEZ 	<ul style="list-style-type: none"> • Outcome of action taken by the assessee which is not illegal or forbidden by the law • Misuse or Abuse of Domestic Tax Law or Tax Treaty to avoid tax • Tax avoidance is the art of dodging tax without breaking the law – McDowell & Co Ltd 154 ITR 148 (SC) 	<ul style="list-style-type: none"> • Unlawful and is the result of illegality, suppression, misrepresentation and fraud • Evasion of taxes by illegal means • Prohibited by tax laws

Diverse views by Indian Apex Court in various cases across past 60 years.....



SAAR - Domestic Law and Treaty

SAAR – Domestic Law

- Deemed Gift Taxation – sec 56(2)(x), 56(2)(vii), etc.
- Market Value rules for transfer of immovable property- Sec 43CA/50C
- Market Value rules for transfer of shares of private co – Sec 50CA
- Deemed dividend – Sec 2(22)
- Thin Capitalization – Sec 94B
- Dividend stripping transaction–Sec 94
- Disallowance of certain expenses – Section 14A, Section 40A(3), etc.
- Payments to related party – 40A(2)(b)
- Clubbing of income of spouse, minors and other persons – Sec 64
- Transfer Pricing Regulations – SDT

SAAR - Treaty

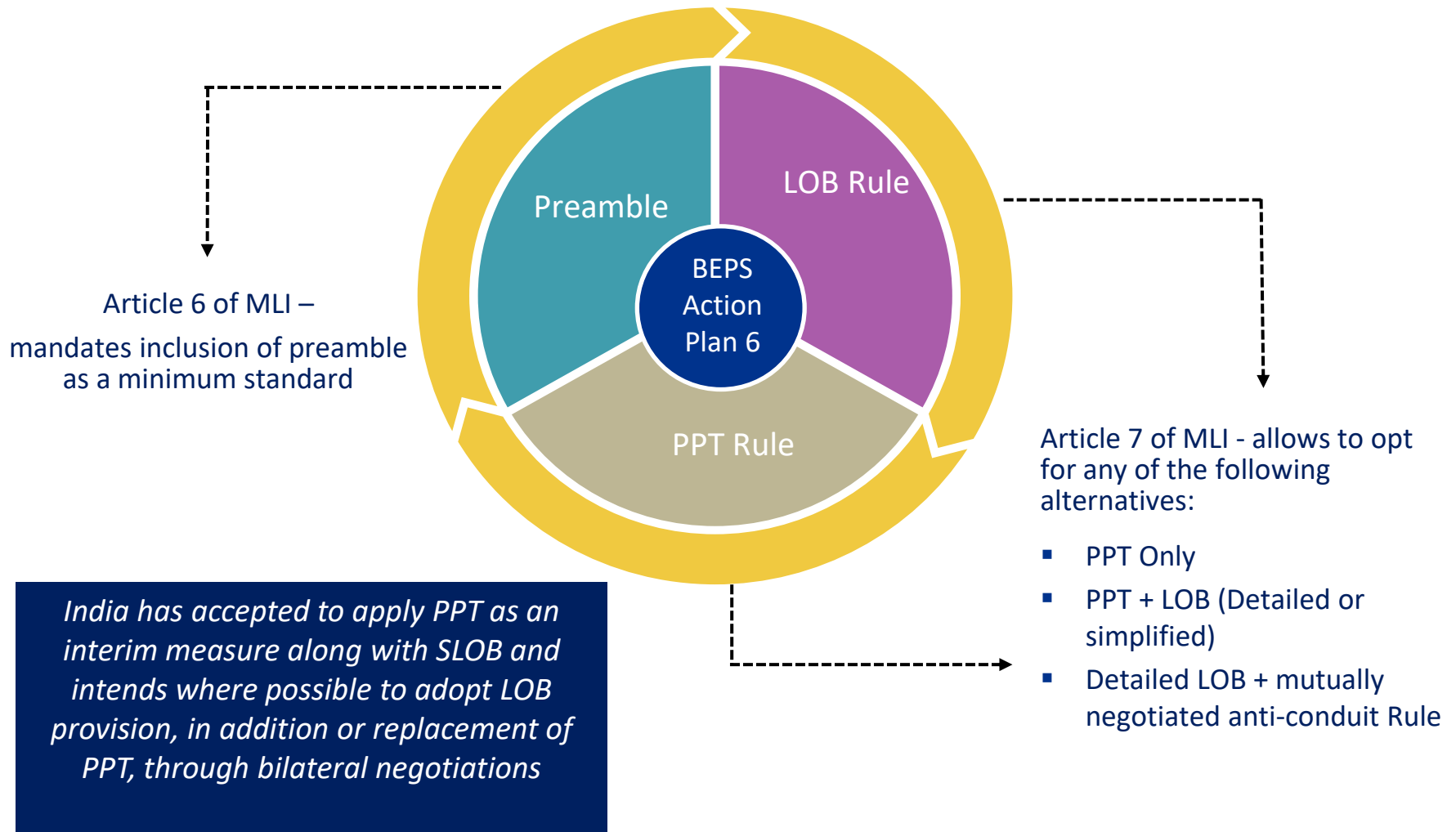
- Whether recipient is a Beneficial Owner in case of passive income like Dividend, Interest, Royalty, FTS
- “LOB” clause
- Minimum shareholding – for participation exemption
- Minimum holding period for taxation of dividend at lower rate, etc.

Need for GAAR and PPT

- To negate abusive tax avoidance arrangements which result in loss of revenue to tax authorities
- Examine cases of aggressive tax planning with use of sophisticated structures
- Critical examination of treaty shopping
- Preserve the tax base of the country from erosion
- Codify the principle of 'SUBSTANCE OVER FORM'
- Shift from 'look-at' approach

BEPS Action Plan 6 : Prevention of Treaty Abuse

Three-pronged approach to address treaty shopping



Overview of GAAR and PPT

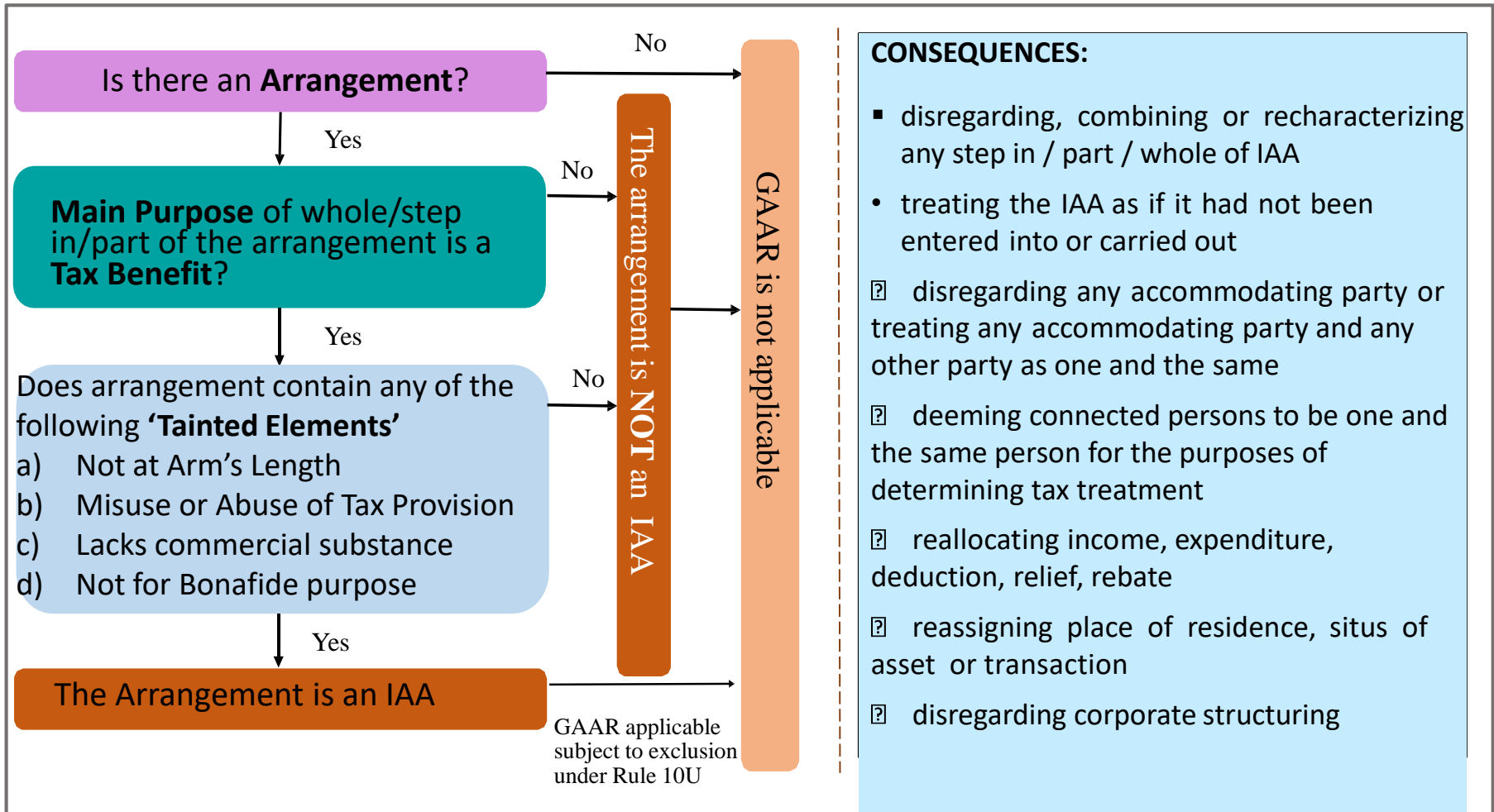


Framework of GAAR - Chapter X-A

Section	Overview
95	Applicability of GAAR
96	Impermissible Avoidance Arrangement (IAA)
97	Arrangement deemed to lack commercial substance
98	Consequences of IAA
99	Treatment of connected person and accommodating party
100	Application of Chapter X-A
101	Chapter X-A to be applied in accordance with guidelines to be framed
102	Definitions
144BA	Administration of GAAR
Rule 10U	Exclusions from applicability of Chapter X-A
Rule 10UA	Determination of consequences of IAA
Rule 10UB	Notices and Forms
Rule 10UC	Time limits
Cir 7/2017	FAQs

GAAR applicable w.e.f 1 April 2017 i.e. AY 2018-19

GAAR Provisions - Snapshot



Framework of MLI Article 7 – Prevention of Treaty Abuse

Paragraph	Content
7 (1)	PPT Rule
7 (2)	Compatibility clause for PPT
7 (3), (4) and (5)	Option to make application to CA and Discretionary powers to CA to grant treaty benefits
7 (6), (7) and (16)	Applicability of SLOB
7 (8) to (13)	Provisions of SLOB
7 (14)	Compatibility clause for SLOB
7 (15)	Right to Reservations
7 (17)	Notification with Depository

MLI Entry into Effect vis-à-vis certain Indian Tax Treaties (ratified by both CJ upto 30 June 2019) w.e.f. 1 April 2020 i.e. AY 2020-21

GAAR and PPT - Scope

GAAR

Sec 95(1): Notwithstanding anything contained in the Act, an arrangement entered into by an assessee may be declared to be an IAA and the consequence in relation to tax arising therefrom may be determined subject to the provisions of this Chapter

Sec 96(1): An IAA means an arrangement, the main purpose 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

PPT

MLI Article 7(1): Notwithstanding any provisions of a CTA, a benefit under the CTA shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, **UNLESS** it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the CTA.

Article 31-Vienna Convention-A treaty to be interpreted in good faith... in the light of its object and purpose

Para 54, OECD Commentary on Article 1:The principal purpose of CTA is to promote, by eliminating international double taxation, exchanges of goods and services, and the movement of capital and persons. As confirmed in the preamble of the Convention, it is also a part of the purposes of tax conventions to prevent tax avoidance and evasion.

GAAR and PPT - Meaning of "Arrangement"

GAAR

Sec 102(1): "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

PPT

BEPS AP 6, Para 9 of Commentary to Para 7 of Article X [PPT]: The terms "arrangement or transaction" should be interpreted broadly and **include** any agreement, understanding, scheme, transaction or series of transactions, whether or not they are legally enforceable.

In particular they include the **creation, assignment,** acquisition or transfer of the income itself, or of the property or **right** in respect of which the income accrues.

- **Whether "transaction" needs to be mutual or can it be unilateral? –Whirlpool of India Ltd [2016] (381 ITR 154) (Delhi HC) –Held that unilateral action by one party in absence of mutual agreement cannot result in an International Transaction in context of sec 92F**
- **Whether "arrangement" can be unilateral? For instance, conversion of capital asset into stock-in-trade covered? Or conversion of Co into LLP?**

GAAR and PPT - Meaning of Tax Benefit

GAAR	PPT
<p>Sec 102(10): "tax benefit" includes,—</p> <ul style="list-style-type: none">(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; or(f) an increase in loss, in the relevant previous year or any other previous year;	<p>BEPS AP 6, Para 7 of Commentary to Para 7 of Article X [PPT]: The term "benefit" includes</p> <p>all limitations (e.g. a tax reduction, exemption, deferral or refund) on taxation imposed on the State of source under Articles 6 through 22 of the Convention, the relief from double taxation provided by Article 23, and the protection afforded to residents and nationals of a Contracting State under Article 24 or any other similar limitations.</p> <p>Example – Lower rate of WHT on dividend, interest, royalty and FTS, restricted definition of royalty / FTS, beneficial Permanent Establishment provisions, Capital gain tax exemption, tax sparing provisions, etc.</p>

GAAR and PPT - Determination of Tax Benefit

GAAR

Sec 99: 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) the 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;

PPT

No explicit mention of disregarding connected person / entity / structure – But entire PPT clause is defined widely

GAAR - Lacks Commercial Substance

GAAR

Sec 97(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 (**Substance over form theory**); or

(b) it involves or includes—

(i) Round trip financing;

(ii) An accommodating party (defined to mean, a party whose 'main purpose' of direct/indirect participation in an arrangement, in whole or in part, is to obtain, a tax benefit);

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 for a party (**Location Benefits**); or

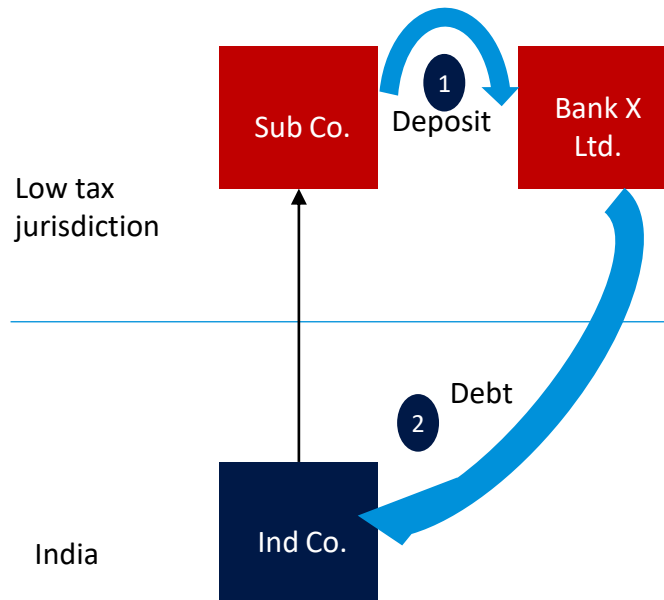
(d) it does not have a significant effect upon the business risks or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained (**No significant Business Risk or Cash Flow**)

GAAR and PPT - Consequences of IAA

GAAR	PPT
<p>Sec 98: Consequences of IAA—</p> <ul style="list-style-type: none">(a) disregarding, combining or re-characterising any step in, or a part or whole of, IAA;<ul style="list-style-type: none">• equity may be treated as debt or vice versa;• capital receipt may be treated as revenue receipt or vice versa; or• any expenditure, deduction, relief or rebate may be re-characterized(b) ignoring the entire arrangement;(c) & (d) disregarding any accommodating party and deeming connected persons as same person;(e) reallocating amongst the parties to the arrangement<ul style="list-style-type: none">(i) any accrual, or receipt, of a capital nature or revenue nature; or(ii) any expenditure, deduction, relief or rebate(f) treating the place of residence, situs of an asset/transaction at a different place(g) disregarding any corporate structure	<p>If PPT is invoked, treaty benefits shall be denied, even if other conditions are fulfilled like satisfaction of LOB clause, services are not “made available”, qualification for participation exemption, etc.</p>

Example of IAA (1/2)

Example 5B: Shome Committee Report

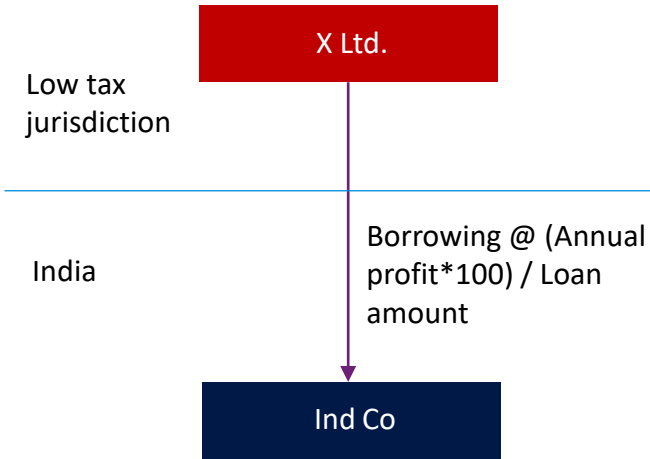


Interpretation:

- Example of Round Tripping – Dividend routed in form of Loan--Tax benefit in form of saving of taxes on dividend income that ought to have been paid by Sub-co
- X Ltd. bank may also be treated as an accommodating party
- In hands of Ind co, the loan amount would be treated as dividend income received from Sub co to the extent reserves are available in Sub co and no expense by way of interest would be allowed
- In the case of bank X Ltd, exemption from tax on interest under the DTAA may not be allowed as X Ltd is not a beneficial owner of the interest

Example of IAA (2/2)

Example 5A: Shome Committee Report



Interpretation:

- Rate of interest is linked to profit
- Thus, could be viewed as an arrangement whose main purpose is to obtain a tax benefit by claiming dividend payment as interest payment
- The tainted element here is the abnormal manner in which such a transaction is being carried out which would not be so in case of a bonafide transaction (loan)
- Hence, GAAR provisions would be invoked and arrangement to be treated as an IAA
- Consequently, in hands of Ind co, the loan to be treated as equity and interest payment to be denied by re-characterizing it as dividend
- No corresponding adjustment to be allowed in hands of X Ltd. for re-characterisation of payment received from Ind co as dividend

GAAR and PPT - Grandfathering

GAAR

Rule 10U(1)(d) : GAAR not to apply to any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from transfer of investments made before 1 April, 2017 by such person.

Rule 10U(2): Without prejudice to the provisions of sub-rule (1)(d), the provisions of Chapter X-A shall apply to any arrangement, irrespective of the date on which it has been entered into, in respect of the tax benefit obtained from the arrangement on or after 1 April, 2017

CBDT Cir 7/2017- Answer to Q.5- Grandfathering available to instruments compulsorily convertible at terms finalized at time of issue of such instrument. Grandfathering also available for shares brought in existence by split or consolidation or through bonus issue, provided the original shares were acquired before 1 April 2017.

- Whether recurring income like Dividend, Interest income, lease rentals, etc – Grandfathered?
- Whether optionally convertible instruments, rights shares – grandfathered?

PPT

No explicit grandfathering under PPT

Implications of carve out clause to PPT, important

- Whether Bonus shares acquired after 31 March 2017, although grandfathered under GAAR, would be grandfathered under Mauritius / Singapore tax treaty?

Grandfathering under GAAR doesn't mean non taxability of a transaction, which is otherwise taxable

GAAR and PPT - De-minimis Threshold

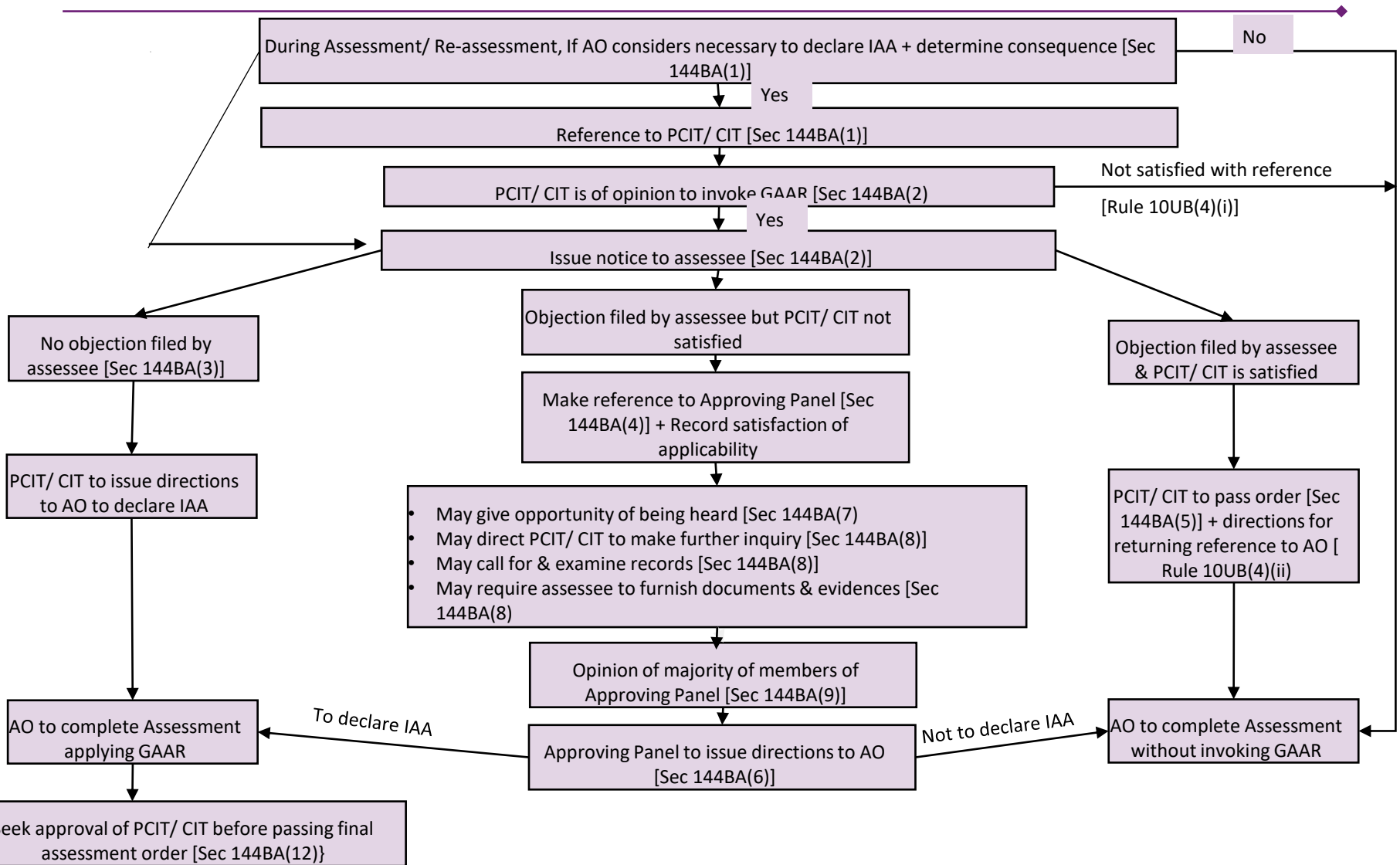
GAAR	PPT												
<p>Rule 10U(1)(a) – GAAR shall not apply if an arrangement where the tax benefit <u>in the relevant assessment year</u> arising, in <u>aggregate, to all the parties</u> to the arrangement <u>does not exceed Rs 3 crores</u></p> <p>Example – GAAR applicable in which year?</p> <table border="1" data-bbox="73 711 981 1116"><thead><tr><th data-bbox="73 711 533 773">Date of Arrangement</th><th data-bbox="533 711 981 773">1 June 2015</th></tr></thead><tbody><tr><td data-bbox="73 773 533 845">Date of Income</td><td data-bbox="533 773 981 845">Amount of Tax Benefit</td></tr><tr><td data-bbox="73 845 533 916">1 July 2015</td><td data-bbox="533 845 981 916">INR 4 Crores</td></tr><tr><td data-bbox="73 916 533 988">1 July 2016</td><td data-bbox="533 916 981 988">INR 2.75 Crores</td></tr><tr><td data-bbox="73 988 533 1059">1 July 2017</td><td data-bbox="533 988 981 1059">INR 6 Crores</td></tr><tr><td data-bbox="73 1059 533 1116">1 July 2018</td><td data-bbox="533 1059 981 1116">INR 2 Crores</td></tr></tbody></table>	Date of Arrangement	1 June 2015	Date of Income	Amount of Tax Benefit	1 July 2015	INR 4 Crores	1 July 2016	INR 2.75 Crores	1 July 2017	INR 6 Crores	1 July 2018	INR 2 Crores	<p>No de-minimis threshold prescribed for invocation of PPT</p>
Date of Arrangement	1 June 2015												
Date of Income	Amount of Tax Benefit												
1 July 2015	INR 4 Crores												
1 July 2016	INR 2.75 Crores												
1 July 2017	INR 6 Crores												
1 July 2018	INR 2 Crores												

GAAR and PPT – Comparative Analysis

Particulars	GAAR	PPT
Applicability	<ul style="list-style-type: none"> • Main purpose is tax benefit; and • One of the tainted element tests is present 	<ul style="list-style-type: none"> • One of the principal purposes is tax benefit • Not in accordance with object and purpose of treaty
Consequences	Re-characterization/disregarding of transaction, re-allocation of income (includes denial of treaty benefit)	Denial of treaty benefit
Onus	Primary onus on tax authority	Primary onus on tax authority and rebuttal assumption for carve out
Administrative safeguards	Approving Panel	To be determined by respective states. OECD and UN Model Commentaries suggest this
Grandfathering	Yes	No
De-minimis threshold	Yes	No

Interplay between GAAR, PPT and LOB

Procedural Safeguard for invocation of GAAR

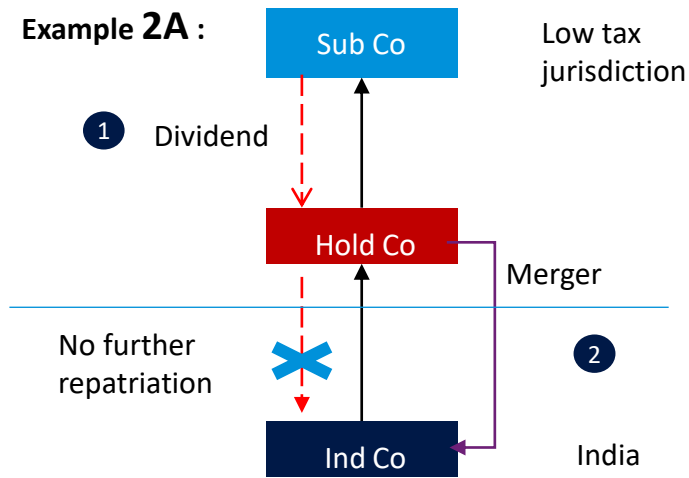


CHOICE Principle



Example - CHOICE Principle - Shome Committee Report

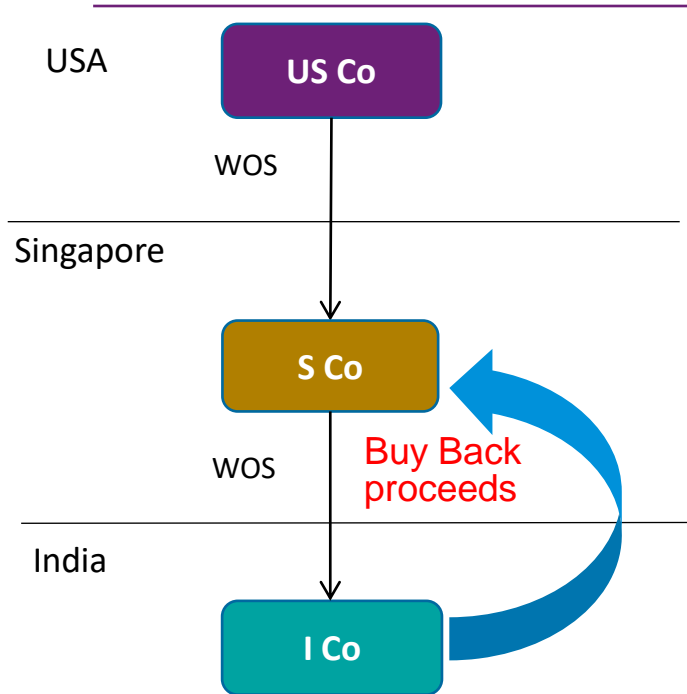
Example 2A :



Interpretation:

- Declaration of dividend or Merger is a business choice of taxpayer
- Section 47 of the Act specifically exempts capital gains on cross border merger of a foreign company into an Indian company.
- GAAR should not be invoked

Case Study - CHOICE Principle - Dividend versus Buy Back



Facts:

- S Co holds shares of I Co in physical form and such shares are distinctly identifiable
- I Co has accumulated profits and never declared dividend
- Management of I Co was exploring dividend versus buy-back route for repatriation of accumulated profits
- Decision was made by I Co to buy back Tranche 3 shares from Sing Co in Oct 2020 at FMV of say INR 200
- I Co to pay buy back tax on distributed income of INR 20 u/s 115QA of the IT Act

Questions:

- Whether Tax Authorities can invoke GAAR provisions with an argument of savings in tax arbitrage if dividend would have been declared? Or whether Tax Authorities could contend that Buy-Back should have done following FIFO?

Tranches	FV	Premium	Total
Tranche 1	100	5	105
Tranche 2	100	10	110
Tranche 3	100	80	180

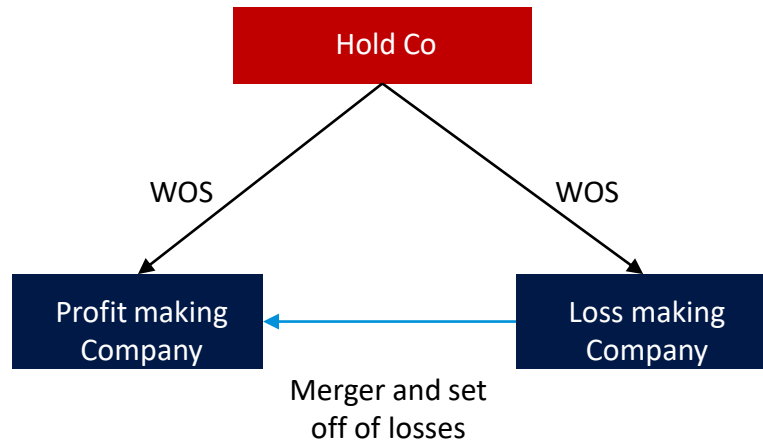
CBDT Circular 7/2017 reply to Q.3: GAAR will not interplay with the right of the taxpayer to select or choose method of implementing a transaction

Interplay of GAAR and SAAR



Example- Interplay of GAAR & SAAR-Shome Committee Report

Example 3:



Interpretation:

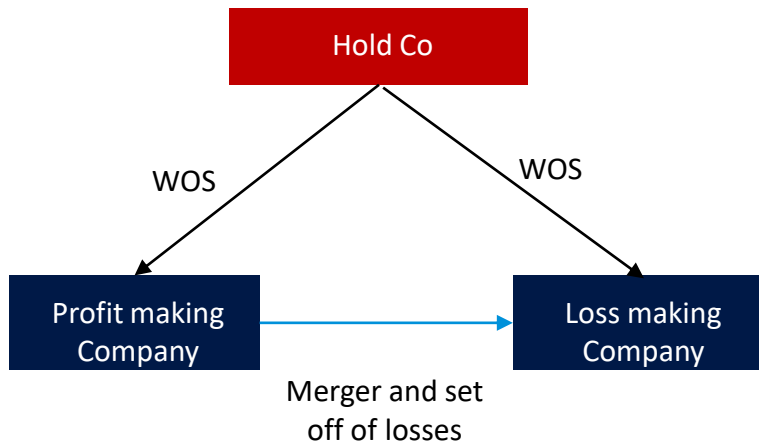
- As regards setting off of losses, the provisions relating to amalgamation already contain SAAR safeguards
- GAAR should not be invoked when SAAR is applicable

CBDT Circular 7/2017 dated 27 January 2017

Question 1 : Will GAAR be invoked if SAAR applies?

Answer: Yes, GAAR and SAAR can co-exist

Example 3A:



Interpretation:

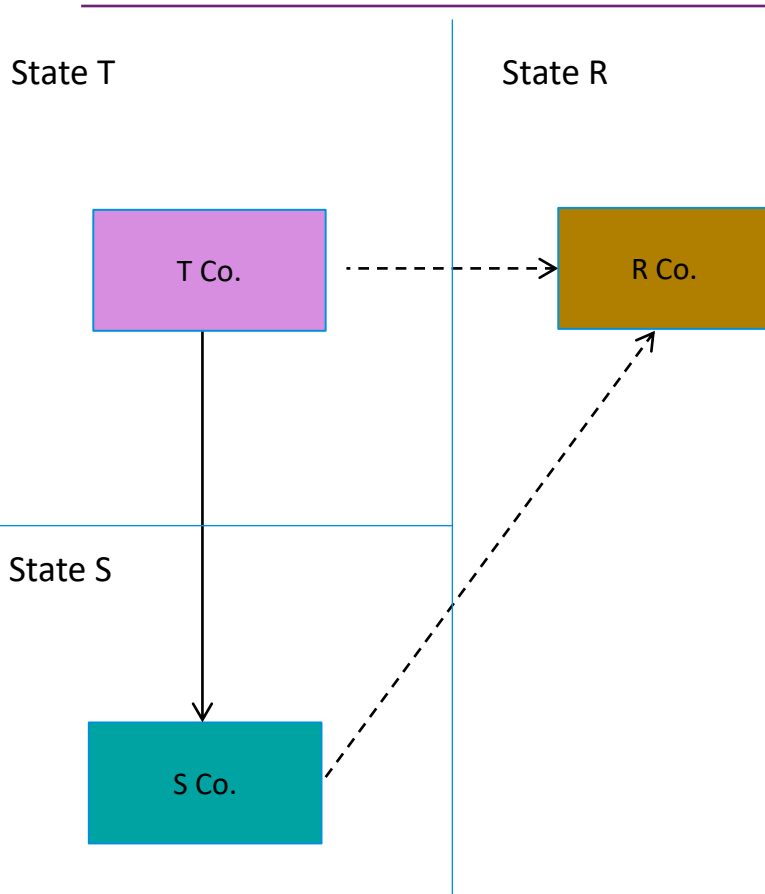
- In case of merger of profit making company with loss making company, there is no SAAR safeguard
- However, since such merger would be under the order of High Court, GAAR cannot be invoked

CBDT Cir 7/2017 – Reply to Q.8 – GAAR not to apply only where Court has explicitly and adequately considered tax implications while sanctioning scheme

Few Examples on PPT - BEPS AP 6



MLI Article 7 – Examples on PPT (1/5)



Example A of BEPS AP 6 [Refer Page 59-Section A] – Assignment of Dividend Rights

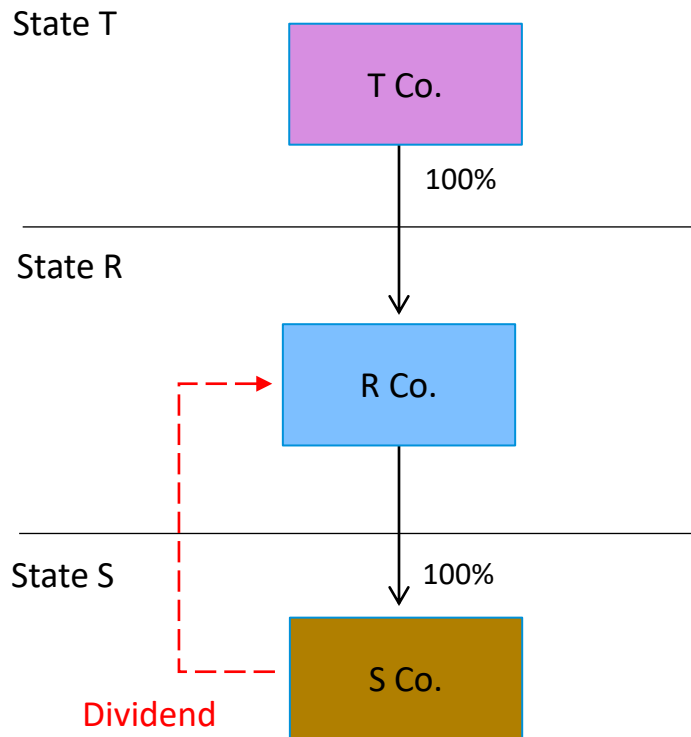
- TCo owns shares of SCo, a Company listed on the stock exchange of State S.
- State T does not have DTAA with State S - dividend paid by SCo is subject to WHT of 25 per cent as per domestic law of State S.
- State R-State S DTAA: No WHT on dividends
- TCo enters into agreement with RCo, an independent financial institution, resident of State R
- TCo assigns to RCo the right to the payment of dividends that have been declared but have not yet been paid by SCo.

Can treaty benefit be denied?

BEPS recommendations

It would be reasonable to conclude that one of the principal purposes of the arrangement was to obtain tax benefit by treaty-shopping arrangement. Hence PPT shall get invoked.

MLI Article 7 - Examples on PPT (2/5)



Example B of BEPS AP 6 [Refer Page 66-Section A] – Intermediary Company is a Holding cum Operating Company

- T Co (incorporated in State T) owns shares of R Co (incorporated in State R), and R Co owns shares of S Co (incorporated in State S).
- State T does not have DTAA with State S
- State R has a favourable DTAA with State S
- R Co is engaged in manufacturing of electronic products
- S Co is an exclusive distributor in State S of products manufactured by R Co in State R
- S Co wants to declare dividend to R Co

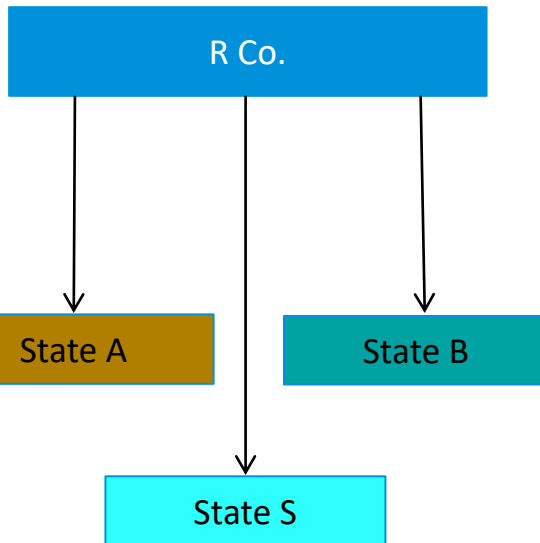
Question:

- Whether this structure constitutes a conduit arrangement and whether benefits of DTAA between State R-State S can be denied for taxation of dividend declared by S Co to R Co

BEPS recommendations

R Co is carrying on real economic activities in State R. In absence of other facts, it cannot be said that one of the principal purposes for setting up aforesaid structure was to flow through the dividends from S Co To T Co. Hence, the aforesaid structure would not constitute a conduit arrangement

MLI Article 7 - Examples on PPT (3/5)



Example C of BEPS AP 6 [Refer Page 60-Section A] – Setting up Manufacturing Plant:

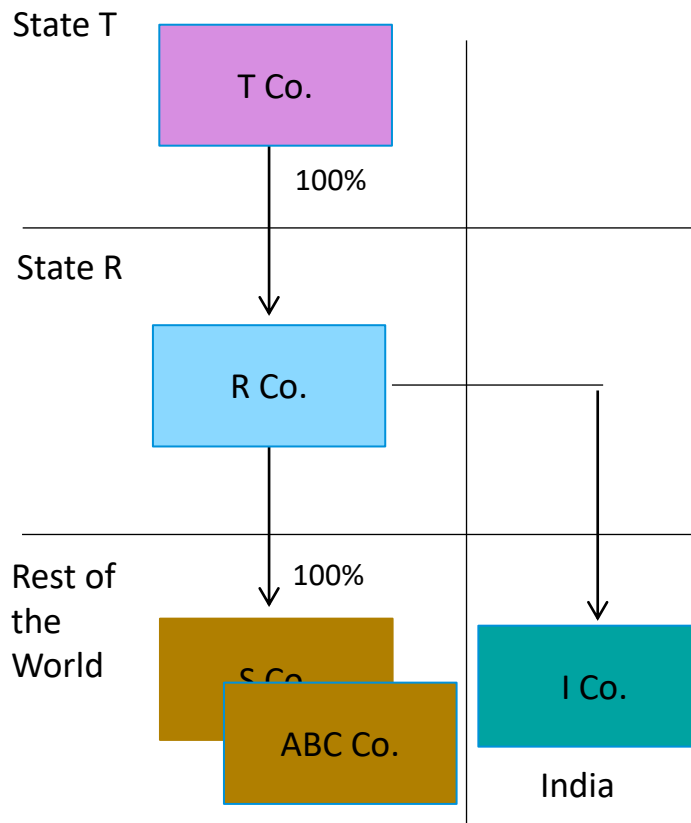
- R Co, a company resident of State R, is in the business of producing electronic devices and its business is expanding rapidly.
- It is now considering establishing a manufacturing plant in a developing country in order to benefit from lower manufacturing costs.
- After a preliminary review, possible locations in three different countries are identified.
- All three locations were comparable economically and politically.
- After considering the fact that State S is the only one of these countries with which State R has a tax convention, the decision is made to build the plant in that State.

Can treaty benefit be denied?

BEPS recommendations

Given that a general objective of tax conventions is to **encourage cross-border investment**, obtaining the benefits of the State R-State S convention for the investment in the plant built in State S **is in accordance with the object and purpose of the provisions of that convention**

MLI Article 7 - Examples on PPT (4/5)



Example – BEPS AP 6 [Refer Page 58-Section A] Para 13 – Regional Co cannot merely rely on multiple treaty argument

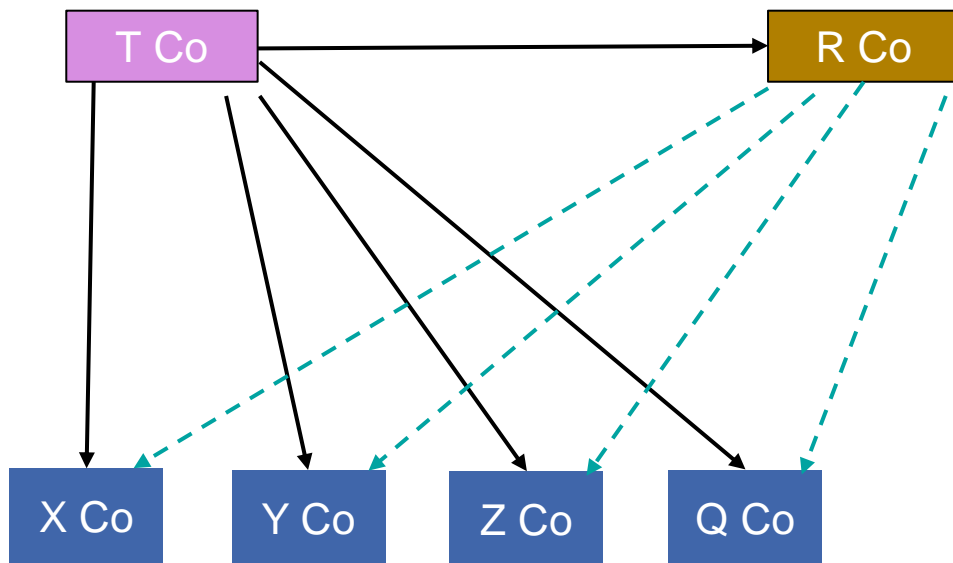
- T Co has incorporated regional headquarter company, R Co in State R which holds multiple investments across the globe
- State R has favourable treaty network with major countries across the globe
- R Co's investment in I Co is miniscule compared to rest of the world
- R Co is not able to explain commercial reasons for its presence in State R
- R Co is desirous to claim benefit of treaty network of country of its incorporation

Question:

Vis-à-vis income from India, R Co's claim is that India cannot invoke PPT as tax benefit in India is not "one of the principal purposes" of its existence in State R - Whether R Co's claim shall be tenable before Indian Tax Authorities?

BEPS recommendations: "If the facts and circumstances reveal that the arrangement has been entered into for principal purpose of obtaining benefits of these (multiple) tax treaties, it should **not** be considered that obtaining a benefit under one specific treaty was not one of the principal purposes for that arrangement."

MLI Article 7 - Examples on PPT (5/5)



Example G of BEPS AP 6 – [Refer Page 62 - Section A] – Regional Co- Performing Management & Financial Services

- T Co owns number of operating subsidiaries in different countries
- It sets up R Co, regional company, to render accounting, legal, HR, financing & treasury services, etc.
- This decision is mainly driven by
 - availability of skilled labour, reliable legal system, business friendly environment, political stability, sophisticated banking industry, etc.; and
 - the comprehensive Double Taxation Tax Treaty network of State R

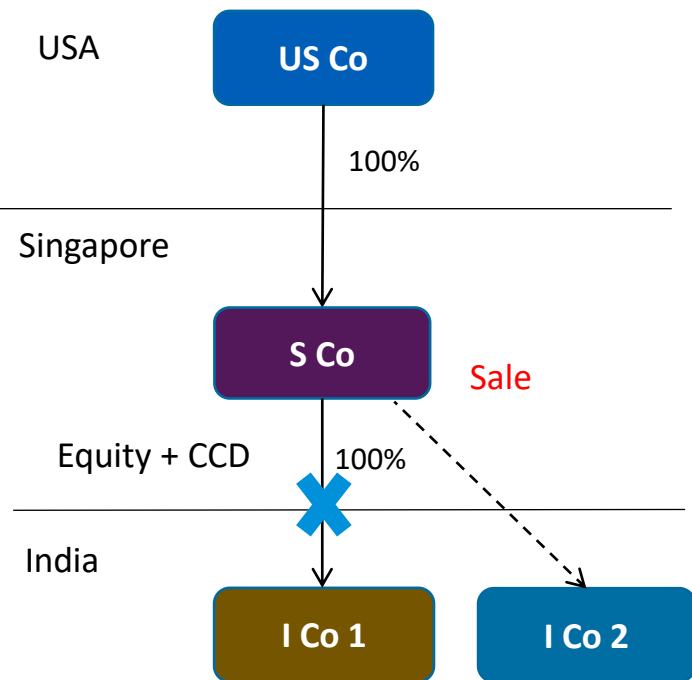
BEPS Recommendation:

PPT rule not to apply if R Co undertakes significant FAR for providing services through its own personnel

Case Studies



Case Study 1- Interpretation of Object and Purpose Clause, Grandfathering under PPT, Interplay between GAAR and PPT



Facts:

- I Co 1 is a WOS of S Co and S Co is a WOS of US Co
- S Co's investments in shares of I Co 1 were made before 1 April 2017
- S Co has invested in CCDs of I Co 1 post 1 April 2017
- S Co transferred certain shares of I Co 1 before 31 March 2020 (**Tranche 1**)
- S Co to transfer balance shares along with CCDs of I Co 1 after March 2020, say in 2021 (**Tranche 2**)

Questions:

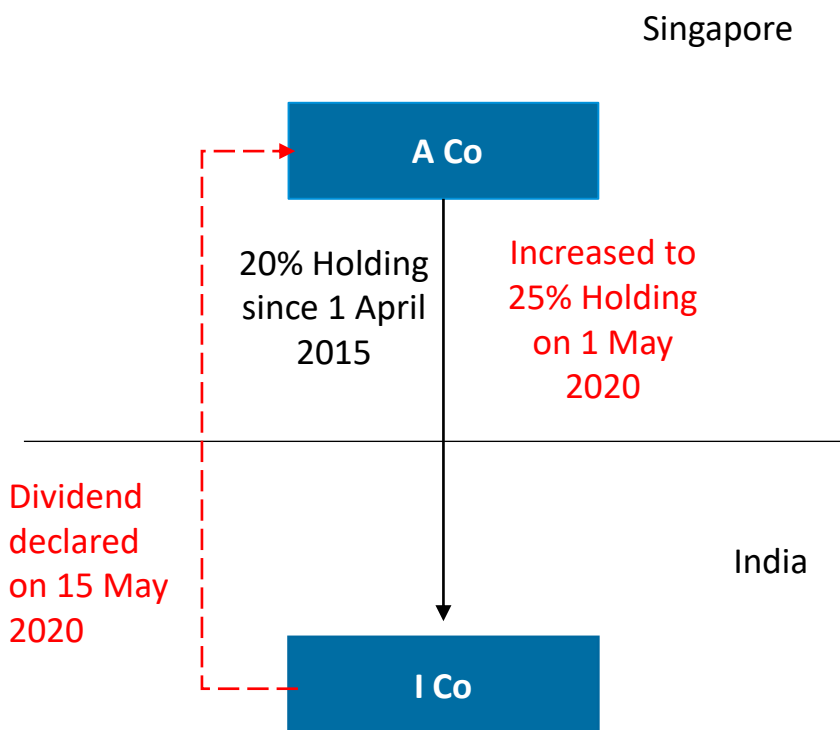
- Whether CG exemption would be available to S Co as per India – Singapore Tax Treaty which is modified by provisions of MLI? Whether PPT can apply to investments grandfathered by GAAR and Protocol to India – Singapore Tax Treaty?
- How to interpret object and purpose of latest protocol to India-Singapore Tax Treaty and MLI events
- If Tax Authorities invoke reasonable purpose test of PPT, can it be argued that as per object and purpose test of PPT, grandfathering of CG for transfer of shares of I Co 1 which were acquired by S Co before 1 April 2017, should be available?

Case Study 1- Interpretation of Object and Purpose Clause, Grandfathering under PPT, Interplay between GAAR and PPT

Assets of S Co.	Acquisition	Sale	GAAR applies?	PPT applies?	Points to Ponder
I Co Shares (Tranche 1)	Pre April 2017	Pre March 2020	No**	No***	
I Co shares (Tranche 2)	Pre April 2017	In 2021	No**	?	Can PPT apply to GAAR grandfathered and treaty grandfathered investments?
CCDs of I Co (Tranche 2)	Post April 2017	In 2021	Yes	Yes	Can PPT and GAAR apply simultaneously?

- **GAAR not to apply in respect of income from transfer of investment made before 31 March 2017 [Rule 10U(1)(d)]
- ***W.r.t India – Singapore Tax Treaty, MLI has come into effect w.e.f.1 April 2020 (from India's perspective)

Case Study 2 - Increase in Shareholding of I Co by Singaporean Co, followed by Dividend Repatriation from India



Article 10(2)(a) of India –Singapore Tax Treaty : Provides for concessional tax rate of 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends

Facts:

- A Co holds 20% stake in I Co, since 1 April 2015;
- DDT regime abolished in India from 1 April 2020 and Dividend is now taxable in hands of shareholders
- On 1 May 2020, A Co buys additional 5% stake in I Co from a third party at arms length price to increase its stake in I Co to 25%
- I Co declared dividend on 15 May 2020

Questions:

- Whether withholding of tax on dividend repatriation can be done at concessional rate as provided in India-Singapore tax treaty?
- Whether PPT has any adverse impact on this transaction?
- Whether GAAR can be invoked and Singapore tax treaty benefits be denied?

Case Study 2 - Increase in Shareholding of I Co by Singaporean Co, followed by Dividend Repatriation from India

ANALYSIS OF IMPLICATIONS UNDER INDIA-SINGAPORE TAX TREATY (POST MLI REGIME):

- India-Singapore Tax Treaty stands modified by MLI Provisions w.e.f. 1 April 2020

Whether MLI Article 8 is applicable to India-Singapore Tax Treaty:

- No, Since Singapore has opted out of MLI Article 8

Whether India-Singapore tax treaty benefits can be denied by invoking PPT:

- **Reasonable Purpose Test:**
 - One of the principal purposes of buying additional 5% stake in I Co is to meet participation clause and avail concessional rate of dividend taxation under India-Singapore Tax Treaty
- **Object and Purpose Test:**
 - Granting treaty benefit to genuine investor who increases stake to meet participation clause should be regarded to be in accordance with object and purpose of the Treaty [**Example E of BEPS AP 6**]

ANALYSIS OF IMPLICATIONS UNDER GAAR:

- Section 90(2A) overrides provisions of Section 90(2) and thus if GAAR can be invoked, treaty benefits can be denied
- Is it an IAA?
- While it can be said that the main purpose of buying additional 5% stake in I Co is to obtain tax benefit in form of concessional rate of dividend tax under treaty, whether any of the tainted elements would be triggered?

Key Takeaways



- Commercial Substance and rationale for a transaction / arrangement




- Chronology of events



- Time Gap of chain of events




- Valuation



- Related Party Transactions – may need more justification



- Documentation, Disclosures and Reporting



- 'But for Test' – No Tax Benefit, but for the transaction / arrangement

Glossary

Terms	Abbreviations	Terms	Abbreviations
Azadi Bachao Andolan	ABA	Limitation of Benefit	LOB
Base Erosion and Profit Shifting Action Plan	BEPS AP	Limited Liability Partnership	LLP
Central Board of Direct Taxes	CBDT	Minimum Alternate Tax	MAT
Competent Authority	CA	Model Convention	MC
Contracting jurisdiction	CJ	Multilateral Instrument	MLI
Controlled Foreign Corporation	CFC	Organisation for Economic Co-operation and Development	OECD
Covered Tax Agreement	CTA	Permanent Establishment	PE
Dividend Distribution Tax	DDT	Place of Effective Management	POEM
Double Taxation Avoidance Agreement	DTAA	Principal Purpose Test	PPT
Entry Into Effect	EIF	Qualified Person	QP
Fair Market Value	FMV	Simplified LOB	SLOB
Fees for Technical Services	FTS	Specific Anti Avoidance Rules	SAAR
Fringe Benefit Tax	FBT	Supreme Court	SC
General Anti Avoidance Rules	GAAR	Withholding Tax	WHT
Impermissible Avoidance Arrangement	IAA		

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Thank You

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