GAAR Simplified - the crucial elements of the law relating to anti-tax avoidance measures

The government on Monday announced some significant changes in the GAAR rules and also decided to defer its implementation by two years. **ET** explains the crucial elements of the law relating to anti-tax avoidance measures.

What is GAAR **and what does it mean when it is invoked?**

These rules target any transaction or business arrangement that is entered into with the objective of avoiding tax. More and more countries are adopting these rules to check aggressive tax planning.

When GAAR is invoked, it would mean that particular transaction or arrangement would be impermissible and denied the tax benefit it has claimed.

Clarity on when GAAR will be invoked

The rules will be invoked when the main purpose of an arrangement is to obtain a tax benefit. The earlier provision said one of the main purpose. It will apply only to investments made after August 30, 2010

Will Participatory Note (P-notes) **be subject to GAAR?**

GAAR will not apply to non-resident investors in FIIs. This clarifies that the tax authorities will not go behind theFIIs and apply GAAR to those who invest in India through them.

Will FIIs attract GAAR?

GAAR will not apply to FIIs that do not claim any double taxation avoidance treaty benefit. Similarly, FIIs that pay appropriate tax will not be subject to GAAR

Will GAAR provisions override India's tax treaties?

Clarity on When GAAR Will be Invoked If any arrangement is found to be impermissible under GAAR, it will be denied treaty benefits. This essentially means treaty benefits will be available to residents of the country and not those who use to route to save tax.

PROVISIONS TO PROTECT TAXPAYERS FROM HARASSMENT

> Assessing officer will be required to issue a show cause notice stating reasons for invoking GAAR

> Taxpayer will have an opportunity to put its case before the officer

> The three member panel that will fi nally approve GAAR will have only one income tax official

> There will be a mechanism of obtaining advance ruling whether an arrangement is permissible or not

> Time limits will be prescribed for various authorities under GAAR

> GAAR will apply only when tax benefit exceeds Rs 3 crore

> Same income will not be taxed twice by invoking GAAR

> Where SAAR and GAAR both apply, only one will be invoked Where only a part of an arrangement impermissible GAAR will apply to only that part

Does this mean those coming through Mauritius will be taxed?

As explained, the GAAR can over-ride bilateral tax treaties, but genuine residents can claim treaty benefits.

Government's decision on GAAR is silent on if a Mauritius investors with a tax residency certificate will be treated as a Mauritius resident.

So investors routing their investments through Mauritius to avail tax benefit will face Damocles' sword in new GAAR regime.

(Economic Times)