



# International Taxation Conference 2011

Compliance Issues affecting  
International Transactions under the  
proposed Direct Tax Code

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# Point of Time for Invoking GAAR

The Commissioner shall issue a notice to the assessee for invoking GAAR S.154(1). No time limit for issue of the notice is prescribed.

The following issues arise-

Whether GAAR can be invoked-

- (a) Before the assessment?
- (b) During the course of assessment on recommendation of the Assessing Officer?
- (c) Even after the completion of assessment?

Will time limit be prescribed later along with other conditions under Section 123?

# Can Assessment be reopened for Invoking GAAR?

- A related compliance issue would be whether assessment can be reopened under Section 159 for the purpose of invoking GAAR after it is completed or where the assessment is done by way of summary assessment and the time limit for issue of notice under Section 150(2) has expired?
- Can direction issued by the Commissioner under Section 154 form basis for ‘reason to believe that any tax base chargeable to tax has escaped assessment’?

# Appeal against Order under Section 153

- No appeal lies under Section 183 against the Order of the Commissioner under Section 154 declaring an arrangement as an impermissible avoidance arrangement.
- Assessee can file appeal before the Commissioner(Appeals) only after the Assessing Officer passes the Assessment Order under Section 155 following the direction of the Commissioner to treat a transaction as an impermissible arrangement.

# Appeal against Order under Section 153

- Whether a writ can be filed against the Order of the Commissioner under Section 154?
- It seems DRP is one remedy available to the assessee against the Order of the Assessing Officer before appeal to the ITAT.

# **Applicability of the Code to assessments for the Years ended on or before 31<sup>st</sup> March, 2012**

- **Section 318(2) - Notwithstanding the repeal of the Income tax Act, 1961 and the Wealth tax Act, 1957,**
- **(b) Where a return of income for the F.Y. ending 31<sup>st</sup> March, 2012 or any earlier year is filed after the commencement of the Code, the assessment shall be made as per the procedure specified in the Code**

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- **(e) Where any income or wealth for any A.Y. after 31<sup>st</sup> March, 2001 has escaped assessment and no proceedings under Section 147 of the repealed Act are pending, the provisions of the Code shall apply.**
  - **In such cases would GAAR apply to the transactions entered into prior to 31<sup>st</sup> March, 2012?**

# Advance Ruling and GAAR

- Where an Advance Ruling has been obtained by a Resident or a Non Resident, can The Commissioner invoke GAAR?
- S.258(11) provides ‘The Authority shall, before pronouncing its Advance Ruling, provide an opportunity of being heard to the applicant or to the Commissioner’
- It is further provided that the Authority shall pronounce its Advance Ruling after examining the material placed before it by the Commissioner.

# GAAR and Penalty

- Where adjustments are made on the basis of the order of the Commissioner invoking GAAR, would such adjustments be regarded as under reporting of tax bases and would attract penalty under Section 230?



# **Compensatory Adjustments to the Other Party**

- **The Commissioner is supposed to forward a copy of his order under Section 154 to the jurisdictional Commissioner of the other party to the transaction.**  
**Would the other party be allowed corresponding adjustments?**



**THANK YOU**