General Anti-avoidance rule

General Anti-avoidance Rule (GAAR) is a concept which generally empowers the Revenue Authority in a country to deny tax benefit of transactions or arrangements which do not have any commercial substance and the only purpose of such a transaction is achieving the tax benefit. The need for a GAAR is usually justified by a concern that the integrity of the tax system needs to be strengthened.

Mature economies like Canada, Austria, Germany or France have introduced a GAAR; however, some of the leading nations like USA and UK have taken a cautious approach. Currently introduction of the GAAR is discussed in India and it becomes a hot issue after the Indian Supreme Court pronounced long awaited decision in the landmark Vodafone case .

The GAAR is composed as a broad rule based on general principles to counter potential avoidance of the tax in general, in a form which cannot be predicted in advance. Opposite to the broad rule, specific anti avoidance rules (SAAR) exist. The SAAR is a set of rules which target specific “known” arrangements of tax avoidance having very limited scope of application which generally do not grant any discretion to the tax authorities.

Even thought the GAAR could be seen as an important tool for governments to prevent impermissible tax avoidance arrangements, it has also a negative side. The GAAR creates uncertainty in terms of tax implications of various businesses and non-businesses transactions. Uncertainty and practical difficulties for the taxpayers can create a negative environment for domestic as well as foreign inward investment. This is the main reason why UK has withdrawn proposed legislation on Anti Treaty Avoidance. UK`s special study group pointed out that a broad spectrum the GAAR would not be beneficial for the UK tax system as it would carry “a real risk of undermining the ability of business to carry out sensible and responsible tax planning”. To the similar opinion came also the Supreme Court of India in the case of Vodafone: genuine strategic tax planning is permissible.

Therefore it is crucial to ensure that after GAAR`s introduction the tax system does not fall into disrepute. That is why the GAAR must be administered transparently; it would be a better approach to introduce the GAAR in a phased manner; or to introduce specific rules (SAAR) first.

GAAR in Germany:

German Tax Code provides for the GAAR in German tax law. This provision has three important features:

- Inappropriate tax planning constitutes abuse
- The presumption of abuse can be rebutted by the tax payer by demonstrating sound business reasons of the particular structure
- The GAAR is superseded if a special anti-abuse rule applies

An abuse occurs only if the taxpayer chooses an “inappropriate legal option”. According to the German Federal Tax Court the world “inappropriate” describes any legal structure that two unrelated and reasonable parties would not have chosen to achieve a specific business goal.

[1]India’s Supreme Court ruled in favour of Vodafone Group ending a legal battle over $2.2bn in taxes and bringing clarity to rules governing the taxation of foreign investment made through offshore investment vehicles. At question was Vodafone’s 2007 acquisition of the Indian operations of Hong Kong-based Hutchison Whampoa Ltd for $10.7bn. The Indian government had argued that since the assets themselves were based in India, taxes from the transaction were owed to the Indian government. (source: Emerging Markets Private Equity Association)

Kontakt

Peter Chrenko

peter.chrenko@cz.pwc.com
+420 251 152 600

Zdeněk Hrdlička

zdenek.hrdlicka@cz.pwc.com

+420 251 151 867