

## Understanding of General Anti Avoidance Rule implications

In accordance with the Federal Decree-Law No. 47 of 2022 on Taxation of Corporations and Businesses (Corporate Tax Law / Law), UAE will implement General Anti-Abuse Rule (GAAR) effective from the date of publication of the Law in the Official Gazette.

GAAR applies to transactions or arrangements where one of the main purposes of the said transaction or arrangement is to obtain a Corporate Tax (Tax) advantage that is not consistent with the intention of the Corporate Tax Law.

GAAR serves as an anti-tax avoidance measure that keeps a check on the businesses that enters into transactions or arrangements having corporate tax advantage as primary objective.

The instances of corporate tax advantage (as envisaged in the Corporate Tax Law) includes:

Obtaining a tax refund or increase refund
Avoidance or reduction of tax
Deferral of tax payment or advancement of refund of tax
Avoidance of an obligation to account for Corporate tax

GAAR as a concept is also seen being implemented in the global context. Many countries have adopted GAAR in some form, though few have just taken a cautious approach and are still considering the introduction of one.

GAAR authorizes the Tax Authority of the particular country (FTA in UAE's scenario) to disregard the transactions or arrangements, which do not have any commercial substance and are undertaken only for tax benefit.

Although, the GAAR provisions contemplate substantial powers in the hands of the Tax Authority, the provisions cannot be applied arbitrarily and could be applied to transactions or arrangements that are considered to be "abusive".

It shall be noted that 'arrangement' includes any agreement, understanding, scheme, transaction, or series of transactions, whether or not legally enforceable.

The "double reasonableness test" has to be applied in order to determine whether the tax arrangements are "abusive". The 'double reasonableness' test sets a high threshold by asking whether:

- ▶ It would be reasonable to hold the view that the arrangement was a reasonable course of action.
- ▶ In turn, if that view (i.e., the view that they are or are not reasonable) is itself reasonable.

However, just because a view is considered as commonly held, it does not make it a reasonable view. Certain surrounding circumstances has to be taken into account when considering whether tax arrangements are abusive for the purposes of the GAAR such as:

- ▶ whether the substantive results of the arrangements are consistent with the principles and policies on which these provisions are based.
- ▶ whether the means of achieving the substantive results involves one or more contrived or abnormal steps.
- ▶ whether the arrangements are intended to exploit any shortcomings in those provisions.

Likewise in the UAE, the General Anti-Abuse Rule applies to a transaction or arrangement if it can reasonably be concluded that:

- ▶ The entering into or carrying out of the transaction or arrangement, or any part of it, is not for a valid commercial or other non-fiscal reason which reflects economic reality; and
- ▶ The main purpose, or one of the main purposes, of the transaction or arrangement is to obtain a Corporate Tax advantage that is not consistent with the intention or purpose of the CT Law.

The FTA is empowered to make a determination that the Corporate Tax advantages obtained as a result of such transaction or arrangement are to be counteracted or adjusted, in accordance with the requirements set out in Article 50 of the Corporate tax law.

[Click here for the Federal Decree Law 47 of 2022 on Corporate Tax Law](#)

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