



CBDT amends General Anti-Avoidance Rules

Background

The General Anti-Avoidance Rules (GAAR) were introduced in the Direct Taxes Code (DTC) in 2009 to curb 'Impermissible Avoidance Arrangement' (IAA) entered into by a person to avoid taxes. The GAAR had been introduced to deal with aggressive tax planning involving use of sophisticated structures.

The Finance Act, 2013 introduced the GAAR provisions in the Income-tax Act, 1961 (the Act). The Finance Act, 2016 provides the effective date as 1 April 2017 [Assessment Year (AY) 2018-19]. Subsequently, the Central Board of Direct Taxes (CBDT), notified the rules relating to application of GAAR.

Recently, the CBDT vide Notification No. 49/2016, dated 22 June 2016¹, has amended the GAAR rules. The amended rules are as follows:

- As per Rule 10U(1)(d), the GAAR provisions are not applicable 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 investment made before the 30 August 2010. The date of 30 August 2010 has been substituted with 1 April 2017.
- As per Rule 10U(2), the GAAR provisions are applicable to any arrangement, irrespective of the date on which it has been entered into, in respect of the tax benefit obtained from an arrangement on or after the 1 April 2015. The date of 1 April 2015 has been substituted with 1 April 2017.

Our comments

Subsequent to introduction of provisions of GAAR, various stakeholders have proposed that GAAR provisions should not be made applicable to existing structures/ arrangements/ investments till the effective date of GAAR provisions i.e. 1 April 2017 (AY 2018-19) and ought to be grandfathered. In line with the same, the amended rules have replaced grandfathering date for investments made before 30 August 2010 to 1 April 2017.

The prospective applicability of GAAR provisions is a welcome move which will provide certainty and will also help to boost confidence of the taxpayers and foreign investors.



¹ www.taxguru.in

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