

# International Tax Dialogue

Singapore

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GAAR vs PPT-Interplay

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India GAAR	Singapore GAAR	Canada GAAR	Australia GAAR	PPT
<ul style="list-style-type: none"> <li>❖ The main purpose</li> <li>❖ And one of the four tainted elements</li> <li>❖ Impermissible Avoidance Arrangement (IAA)</li> <li>❖ Abuse of provisions-critical</li> </ul>	<ul style="list-style-type: none"> <li>❖ Tax advantage availed beyond the scope of the parliament's contemplation and purpose</li> <li>❖ Tax incentives as per the tax statutes not hit by GAAR</li> </ul>	<ul style="list-style-type: none"> <li>❖ One of the main purposes</li> <li>❖ Economic substance test (amended in 2024)</li> </ul>	<ul style="list-style-type: none"> <li>❖ Sole or dominant purpose</li> <li>❖ As a last resort method <ul style="list-style-type: none"> <li>- Annihilation Approach</li> <li>- Reconstruction Approach</li> </ul> </li> <li>❖ MAAL targets PE of SGEs to collect fair share of taxes</li> </ul>	<ul style="list-style-type: none"> <li>❖ One of the principal purposes</li> <li>❖ Reasonable to conclude <ul style="list-style-type: none"> <li>- subjective component</li> </ul> </li> <li>❖ Unless the benefit is in line with object and purpose of relevant provisions <ul style="list-style-type: none"> <li>- objective component</li> </ul> </li> </ul>

# Principal Purpose Test (PPT)

## Article 29(9)-

*Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention*

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# Principal Purpose Test (PPT)

- ❖ Subjective component – Low threshold – Tax authority can draw an inference of tax benefit in a very easy manner.
- ❖ Objective Component- Object and purpose of the relevant provisions
  - It is an exception to exception
- ❖ The burden of proof of both components lies with tax authorities
- ❖ *Alta Energy* SCC decision has an impact on the PPT interpretation as well
  - Tax authority is under an obligation to demonstrate how the provisions are frustrated
  - Which results in abuse
    - may not be a treaty benefit in source jurisdiction if it is offset in resident jurisdiction (global tax burden)
  - Text of the provisions of the treaty critical in evaluating any abuse
- ❖ The contrary view was held in – *Molinos case (de la Palta SA v Direccio General Impositiva (2021) - Argentina vs Molinos Río de la Plata S.A., September 2021, Supreme Court, Case No CAF 1351/2014/1/RH1*

# Case Laws

## ❖ Alla Ayodhya Rami Reddy – Telangana High Court

- *Ayodhya Rami Reddy Alla vs. PrCIT [2024] 466 ITR 497 (Telangana)[07-06-2024]*
- Bonus stripping-different entities with artificial capital losses to absorb huge IAA- SAAR vs GAAR

capital gains-HC held it as

## ❖ Tiger global

- *Tiger Global International III Holdings [2024] 468 ITR 405 (Delhi)*
- Transaction stands grandfathered by Art.13(3A) of India-Mauritius Tax Treaty-TRC is *sacrosanct*-beneficial ownership concept not agreed

issued by resident jurisdiction

## ❖ SC Lowy P.I.

- *SC Lowy P.I.(LUX) S.A.R.L vs ACIT (ITA No. 3568/DEL/2023)*
- Followed Tiger Global case and ruled in favour of taxpayer-TRC

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# CBDT Circular No. 01/2025

- ❖ Treaty benefits granted only for bonafide transactions
- ❖ Applies prospectively-from effective date of MLI
- ❖ Grandfathering provisions-Cyprus, Mauritius and Singapore – protected
- ❖ Context specific fact-based exercise
- ❖ India's reservation, UN MCC-Art 1& 29 and action plan 6 final report

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# GAAR vs PPT -Interplay

- ❖ Is there an option for taxpayer to be governed by GAAR or PPT-India-Sec.90(2) of IT Act.
  - Checks and balances of Indian GAAR very strong unlike PPT rule
- ❖ Treaty override-GAAR provisions to override treaty provisions
  - Whether it includes PPT rule also
  - If taxpayer is under the carve out of PPT-is GAAR application not breach of “good faith” ?
- ❖ Art. 11 of MLI-Saving Clause- preserves a states right to tax its own residents
  - No reservation by both the treaty partners of CTA – GAAR application justified
- ❖ Application of both GAAR and PPT against the same transaction-is it not an overdose of Anti-Avoidance rules ?

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# Thank you

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