

1st NLS-TIOL Taxation Law Conference

CONCEPT NOTE

The General Anti-Avoidance Rule [“GAAR”] was introduced in the Finance Act, 2012 following the decision of the Supreme Court in *Vodafone v. Union of India* and has been the subject of extensive discussion since. Most recently, the Expert Committee on the Application of GAAR under the Income Tax Act, 1961, headed by Parthasarathi Shome [“Shome Committee”] proposed several controversial changes to the manner in which GAAR is to be applied. Over this conference, we seek to explore some of these recommendations.

First, the Shome Committee makes a number of recommendations which provide clarity to the application of the GAAR and the manner in which it is to be applied. It recommends that a new section be introduced, defining an “arrangement lacking commercial substance.” It also proposes that the GAAR be inapplicable in case a specific anti-avoidance rule is applicable. In respect of treaties, the GAAR should be inapplicable if the treaty itself provided for anti-abuse provisions. The Committee also recommends that the GAAR only be invoked if tax avoidance is the “*main purpose*” of the transaction, as opposed to “*one of the main purposes*” in the Finance Act, thus bringing the Income Tax Act in line with the provision in the Direct Taxes Code Bill. Finally, it suggests that the GAAR only be applied *prospectively* and not retrospectively as proposed.

However, the Shome Committee has made a number of recommendations which have caused some concern. The first of these is the suggestion that taxes on transfers of listed securities in India be abolished, whether in the nature of business income or capital gains tax, while simultaneously raising securities transaction tax. This has raised questions of whether this may make trading on the stock market too expensive to engage in on a regular basis. The committee has also proposed that the application of the GAAR be delayed by three years, so as to provide training to Indian officials. Yet, in light of frequent transfers of officials within the Income Tax department, the merits of such a proposal have been doubted.

The Shome Committee report provides yet another opportunity to debate the merits of the General Anti-Avoidance Rule. There is no doubt that aggressive tax-planning schemes are a drain on revenue, and that various jurisdictions have moved towards the application of a statutory GAAR. Nevertheless, the manner in which it is to be applied in India, under the

Income Tax Act and under the proposed Direct Taxes Code, still remain controversial. These are some of the issues that will be explored at the National Law School Tax Conference.

The Conference is modelled along the lines of a panel discussion, as opposed to a series of individual presentations. We believe that this will allow for greater engagement. Each speaker will get an opportunity to make an introductory presentation at the outset to outline views on the larger theme.

After the introduction, the panel will discuss a range of issues within the larger theme, as determined by the members of the panel and the moderator. Through this discussion, members of the panel may present their views on the specific issues, while noting the view of other panelists and engaging them. We hope that eventually, the discussion will lead to a consensus on the issues. Any member of the panel may take a lead on another issue in order to introduce the subject-matter of the debate to the audience, who may also pose questions after the conclusion of discussions between the panelists.