What's New
News Flash
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Indian General Anti-Avoidance Rules are stated to come into effect from April 01, 2017

General Anti-Avoidance Rules (GAAR) have been codified in the Indian income tax law to counter aggressive tax planning arrangements. These provisions, empower the Indian revenue authorities to declare an arrangement as an 'impermissible avoidance arrangement,' if the main purpose of the agreement is to obtain a 'tax benefit', and the arrangement lacks or is deemed to lack commercial substance.

The GAAR provisions are applicable to income arising on or after April 01, 2017. Gains arising from transfer of investments made up to March 31, 2017 have been grandfathered.

Further, the GAAR provisions are not applicable in the following cases:

- Where the tax benefit from an arrangement in a relevant tax year does not exceed INR 30 million (USD 450,000 approx);
- Where Foreign Portfolio Investors (FPIs) registered with the Indian market regulator do not avail any tax treaty benefits;
- Investment made by a non-resident by way of offshore derivative instruments or otherwise, directly or indirectly through an FPI.

Once GAAR provisions are triggered, the Indian Revenue authorities could possibly disregard an arrangement resulting in denial of treaty benefits.

It would be relevant for FPIs availing tax treaty benefits to analyse their current structure from a GAAR perspective.

More recently, the Organisation for Economic Co-operation and Development (OECD) released the 'Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Sharing' (MLI). The MLI, amongst others, includes a "principal purpose test", wherein tax treaty benefits can be denied if one of the principal purpose of an arrangement or a transaction was to, directly or indirectly, obtain tax benefit.

One may have to revisit tax implications in light of the evolving international tax landscape.

In case you need any assistance, please feel free to contact us.

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