

CHAPTER XI

GENERAL ANTI-AVOIDANCE RULE

Applicability of
General
Anti-Avoidance
Rule.

178. (1) Irrespective of anything contained in this Act, an arrangement entered into by an assessee may be declared to be an impermissible avoidance arrangement and the consequence in relation to tax arising from it may be determined subject to the provisions of this Chapter. 5

(2) The provisions of this Chapter may be applied to any step in, or a part of, the arrangement as they are applicable to the arrangement.

Impermissible
avoidance
arrangement.

179. (1) An impermissible avoidance arrangement means an arrangement, the main purpose of which is to obtain a tax benefit, and it— 10

(a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;

(b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;

(c) lacks commercial substance or is deemed to lack commercial substance under section 180, in whole or in part; or 15

(d) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for *bona fide* purposes.

(2) An arrangement shall be presumed, unless it is proved to the contrary by the assessee, to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or a part of, the arrangement is to obtain a tax benefit, irrespective of the fact that the main purpose of the whole arrangement is not to obtain a tax benefit. 20

Arrangement to
lack commercial
substance.

180. (1) An arrangement shall be deemed to lack commercial substance, if— 25

(a) the substance or effect of the arrangement as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part; or

(b) it involves or includes—

(i) round trip financing; or

(ii) an accommodating party; or 30

(iii) elements that have effect of offsetting or cancelling each other; or

(iv) a transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of funds which is the subject matter of such transaction; or

(c) it involves the location of an asset or of a transaction or of the place of residence of any party which is without any substantial commercial purpose other than obtaining a tax benefit (but for the provisions of this Chapter) for a party; or 35

(d) it does not have a significant effect upon the business risks or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained (but for the provisions of this Chapter). 40

(2) In sub-section (1), round trip financing includes any arrangement in which, through a series of transactions—

- (a) funds are transferred among the parties to the arrangement; and
- (b) such transactions do not have any substantial commercial purpose other than obtaining the tax benefit (but for the provisions of this Chapter),

without having any regard to—

5 (A) whether or not the funds involved in the round trip financing can be traced to any funds transferred to, or received by, any party in connection with the arrangement;

(B) the time, or sequence, in which the funds involved in the round trip financing are transferred or received; or

10 (C) the means by, or manner in, or mode through, which funds involved in the round trip financing are transferred or received.

(3) The following may be relevant but shall not be sufficient for determining whether an arrangement lacks commercial substance or not:—

15 (a) the period of time for which the arrangement (including operations therein) exists;

(b) the fact of payment of taxes, directly or indirectly, under the arrangement;

(c) the fact that an exit route (including transfer of any activity or business or operations) is provided by the arrangement.

20 **181.** (1) If an arrangement is declared to be an impermissible avoidance arrangement, then, the consequences, in relation to tax, of the arrangement, including denial of tax benefit or a benefit under a tax treaty, shall be determined, in the manner as deemed appropriate.

Consequences
of
impermissible
avoidance
arrangement.

25 (2) The consequences of an arrangement declared to be an impermissible avoidance arrangement as referred to in sub-section (1) shall include but shall not be limited to the following:—

(a) disregarding, combining or recharacterising any step in, or a part or whole of, the impermissible avoidance arrangement;

30 (b) treating the impermissible avoidance arrangement as if it had not been entered into or carried out;

(c) disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;

35 (d) deeming persons who are connected persons in relation to each other to be one and the same person for the purposes of determining tax treatment of any amount;

(e) reallocating amongst the parties to the arrangement—

(i) any accrual, or receipt, of a capital nature or revenue nature; or

(ii) any expenditure, deduction, relief or rebate;

(f) treating—

40 (i) the place of residence of any party to the arrangement; or

(ii) the situs of an asset or of a transaction,

at a place other than the place of residence, location of the asset or location of the transaction as provided under the arrangement; or

45 (g) considering or looking through any arrangement by disregarding any corporate structure.

(3) In this section,—

(a) any equity may be treated as debt or *vice versa*;

(b) any accrual, or receipt, of a capital nature may be treated as of revenue nature or *vice versa*; or

(c) any expenditure, deduction, relief or rebate may be recharacterised. 5

Treatment of
connected
person and
accommodating
party.

182. In this Chapter, in determining whether a tax benefit exists,—

(a) the parties who are connected persons in relation to each other may be treated as one and the same person;

(b) any accommodating party may be disregarded;

(c) the accommodating party and any other party may be treated as one 10
and the same person;

(d) the arrangement may be considered or looked through by disregarding any corporate structure.

Application of
this Chapter.

183. The provisions of this Chapter—

(a) in addition to, or *in lieu* of, any other basis for determination of tax 15
liability;

(b) as per such guidelines and subject to such conditions, as prescribed.

Interpretation.

184. In this Chapter, unless the context otherwise requires,—

(1) “accommodating party” means a party to an arrangement, if the main purpose of the direct or indirect participation of that party in the arrangement, 20
in whole or in part, is to obtain, directly or indirectly, a tax benefit (but for the provisions of this Chapter) for the assessee whether or not the party is a connected person in relation to any party to the arrangement;

(2) “arrangement” means any step in, or a part or whole of, any transaction, operation, scheme, agreement or understanding, whether 25
enforceable or not, and includes the alienation of any property in such transaction, operation, scheme, agreement or understanding;

(3) “asset” includes property, or right, of any kind;

(4) “benefit” includes a payment of any kind whether in tangible or 30
intangible form;

(5) “connected person” means any person who is connected directly or indirectly to another person and includes,—

(a) any relative of the person, if such person is an individual;

(b) any director of the company or any relative of such director, if 35
the person is a company;

(c) any partner or member of a firm or association of persons or body of individuals or any relative of such partner or member, if the person is a firm or association of persons or body of individuals;

(d) any member of the Hindu undivided family or any relative of 40
such member, if the person is a Hindu undivided family;

(e) any individual who has a substantial interest in the business of the person or any relative of such individual;

5 (f) a company, firm or an association of persons or a body of individuals, whether incorporated or not, or a Hindu undivided family having a substantial interest in the business of the person or any director, partner, or member of the company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member;

10 (g) a company, firm or association of persons or body of individuals, whether incorporated or not, or a Hindu undivided family, whose director, partner, or member has a substantial interest in the business of the person, or family or any relative of such director, partner or member;

(h) any other person who carries on a business, if—

(i) the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or

15 (ii) the person being a company, firm, association of persons, body of individuals, whether incorporated or not, or a Hindu undivided family, or any director, partner or member of such company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member, has a
20 substantial interest in the business of that other person;

(6) “fund” includes—

(a) any cash;

(b) cash equivalents; and

(c) any right, or obligation, to receive or pay, the cash or cash equivalent;

25 (7) “party” includes a person or a permanent establishment which participates or takes part in an arrangement;

(8) “relative” shall have the meaning assigned to it in section 92(5)(g);

(9) a person shall be deemed to have a substantial interest in the business, if,—

30 (a) in a case where the business is carried on by a company, such person is, at any time during the financial year, the beneficial owner of equity shares carrying at least 20% of the voting power; or

(b) in any other case, such person is, at any time during the financial year, beneficially entitled to at least 20% of the profits of such business;

35 (10) “step” includes a measure or an action, particularly one of a series taken in order to deal with or achieve a particular thing or object in the arrangement;

(11) “tax benefit” includes,—

(a) a reduction or avoidance or deferral of tax or other amount payable under this Act; or

(b) an increase in a refund of tax or other amount under this Act; or

40 (c) a reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or

(d) an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or

(e) a reduction in total income; or

45 (f) an increase in loss,

in the relevant tax year or any other tax year;

(12) “tax treaty” means an agreement referred to in section 159(1) or (2).

CHAPTER XII

MODE OF PAYMENT IN CERTAIN CASES ETC.

Mode of taking
or accepting
certain loans,
deposits and
specified sum.

185.(1) No person shall take or accept from another person any loan or deposit or specified sum, except through— 5

- (a) an account payee cheque;
- (b) account payee bank draft;
- (c) electronic clearing system through a bank account; or
- (d) any other prescribed electronic mode,

if,— 10

(i) the amount or the aggregate amount of such loan, deposit, or specified sum; or

(ii) the amount or the aggregate amount of any previously taken or accepted loan or deposit or specified sum by such person from such another person, which is remaining unpaid, whether due for repayment or not, as on the date of taking or accepting such amount as referred to in clause (i); or 15

(iii) the aggregate of the amounts referred to in of clauses (i) and (ii),
is twenty thousand rupees or more. 20

(2) Sub-section (1) shall not apply to loans or deposits or specified sums taken or accepted from or by,— 20

- (a) the Government;
- (b) any banking company, post office savings bank, or co-operative bank;
- (c) any corporation established by a Central, State or Provincial Act; 25
- (d) any Government company as defined under section 2(45) of the Companies Act, 2013; 18 of 2013.
- (e) any institution, association, or body or class of institutions, associations or bodies notified by the Central Government.

(3) The provisions of sub-section (1) shall not apply to any loan or deposit or specified sum where, the person taking or accepting such loan or deposit or specified sum and person from whom such loan or deposit or specified sum is taken or accepted, both, have agricultural income and neither has any income chargeable to tax under this Act. 30

(4) In sub-section (1), “two lakh rupees” shall be substituted for “twenty thousand rupees” in the case of any deposit or loan, where— 35

- (a) such deposit is accepted by a primary agricultural credit society or a primary co-operative agricultural and rural development bank from its member; or
 - (b) such loan is taken from a primary agricultural credit society or primary co-operative agricultural and development bank by its member. 40
- (5) In this section, “loan or deposit” means loan or deposit of money.