Module 14 · General Anti-Avoidance Rule P15 · topics 14.1, 14.2

SM pp. 615–631 (exercise 632); procedure s.144BA at SM 143–144. **Only MCQs** — the ₹3 crore limit (D23, J25, MQP, postal), the Approving Panel's time limit (D25), "is a tax incentive caught?" (J26). No sums. Expected ~2 marks.

Paper	MCQ	Answer
Dec'23 · Jun'25 · MQP (xv) · postal (v)	minimum tax benefit to invoke GAAR	**₹3 crore** (all parties, one AY)
Dec'25 (xv)	time for the Approving Panel's directions	**6 months from the end of the month** in which the reference was received
Jun'26 (xv)	SEZ unit claims 10AA deduction of ₹15 crore	**GAAR not applicable** — taking a fiscal incentive is tax mitigation (CBDT Example 1)
PTP (xv)	GAAR is introduced mainly to ...	**prevent aggressive tax planning**

14.1 · APPLICABILITY (CHAPTER X-A, ss. 95–102)

- Why: codify **substance over form** against aggressive tax planning and opaque low-tax jurisdictions; SAAR (Chapter X etc.) is specific, GAAR is general. Inserted by FA 2013, **effective 1st April 2018** (SM MCQ 1). [SM 615, SM 632]
- **s.95**: an arrangement may be declared an **impermissible avoidance arrangement** (IAA) and its tax consequence determined; may apply to **any step or part**. "Arrangement" = any step in or part / whole of a transaction, operation, scheme, agreement or understanding, enforceable or not. [SM 616]
- **Tax benefit**: reduction / avoidance / **deferral** of tax, higher refund (incl. via a tax treaty), lower total income, higher loss — in that or any other previous year. [SM 617]

RULE 10U · GAAR DOES NOT APPLY TO

a. an arrangement whose tax benefit in the AY, **in aggregate to all parties**, does not exceed **₹3 crore**;

b. an FII that is an assessee, has **not taken treaty benefit** (s.90 / 90A) and invested under SEBI regulations;

c. a non-resident investing in such an FII (offshore derivative instruments or otherwise);

d. income from transfer of investments made **before 1st April 2017**.

Otherwise it applies to any arrangement, whatever its date, for tax benefits obtained on or after 1st April 2017. [SM 616]

DEC'26 SUPPLEMENTARY · RULE 10U (NOTIFICATION 54/2026)

Tenth Amendment Rules 2026 clarify: income from transfer of investments made before 1 April 2017 is excluded **even if it accrues or is received on or after 1 April 2017**, irrespective of when the arrangement was entered into. [Supp D26 p.4]

14.2 · IMPERMISSIBLE AVOIDANCE ARRANGEMENT (s.96)

Main purpose = tax benefit AND at least one **tainted element**: (a) rights / obligations not normally created at **arm's length**; (b) **misuse or abuse** of the Act; (c) **lacks commercial substance** (s.97); (d) means or manner not normally used for **bona fide purposes**. If the main purpose of a **step** is tax benefit, the whole is presumed so unless the assessee proves otherwise. [SM 618]

LACKS COMMERCIAL SUBSTANCE (s.97)

- substance of the whole differs significantly from the form of its steps;
- **round-trip financing**, an **accommodating party**, elements that cancel each other, a transaction through persons that **disguises** value, location, source, ownership or control of funds;
- location of an asset / transaction / residence with no substantial purpose but tax;
- no significant effect on business risks or net cash flows apart from the tax benefit. [SM 618]
- Round trip: regardless of tracing, timing or mode of the funds. Accommodating party: main purpose of its participation is the tax benefit, connected or not. [SM 619]
- **Relevant but not sufficient** (97(4)): how long the arrangement exists, taxes paid under it, an exit route. [SM 619, SM 630]
- Connected person: relatives, directors, partners, members, persons with **substantial interest** (≥ 20% voting power or profits). [SM 619–620]

CONSEQUENCES (s.98) · s.99 · s.100

Deny the tax / treaty benefit by: disregarding, combining or recharacterising steps; treating it as never entered into; disregarding an accommodating party or treating parties (and connected persons) as one; reallocating income / expenditure; re-siting residence or assets; **looking through corporate structures**; equity ↔ debt, capital ↔ revenue. Applies in addition to, or in lieu of, other provisions (s.100). Only the IAA part is affected (Rule 10UA). [SM 620–621]

PROCEDURE · s.144BA AND RULES 10UB / 10UC

1. AO issues a notice seeking objections, then refers to the **PCIT / CIT** (Form 3CEG). [SM 621–622]
2. PCIT / CIT: notice to the assessee, objections within **60 days** at most. No objection → he issues directions; objection not accepted → reference to the **Approving Panel** (satisfaction in Form 3CEI); satisfied GAAR is not needed → order to the AO (Form 3CEH). [SM 143] [SM 622]

CBDT EXAMPLES · GAAR OR NOT?

Facts	GAAR?
1 · SEZ unit claims 100% deduction (J26 MCQ)	**No** — tax mitigation
1A · non-SEZ production shown as SEZ	No — **evasion**, dealt with directly

3. Time limits (Rule 10UC): PCIT's directions within 1 month, and his reference to the Panel within 2 months, from the end of the month of the assessee's compliance / final submission. [SM 622]
4. **Approving Panel**: 3 members — chaired by a person who is or was a **High Court judge**, an IRS officer of PCCIT / CCIT rank, and an academic; term 1 year, extendable up to 3 years; majority decides. [SM 144]
5. Directions within **6 months from the end of the month** of the reference (D25 MCQ); excluded: treaty-information time (up to 1 year) and court-stay period; minimum 60 days left. **Binding on the assessee and the department; no appeal.** [SM 144]
6. An assessment with GAAR consequences needs the **PCIT / CIT's prior approval**; the DRP route does not apply to it. [SM 142, SM 144]

JUN'26 SUPPLEMENTARY · STAY PERIOD

Excluded stay period runs from the date the court grants the stay to the date the certified copy of the vacating order is received by the Approving Panel (for s.144BA). [Supp J26 p.22]

1B · goods moved to SEZ unit below FMV · 1C · new orders shifted to SEZ unit	No — **SAAR** (transfer pricing / the deduction section)
2 · Holdco in NTJ keeps dividends · 2A · later cross-border merger	No — business choice; timing / sequencing
3 · loss company merged into profit company	No — merger SAAR exists
4 · lease instead of buy	No — **but circular leasing** may be examined
5 · Subco deposit → bank → back-to-back loan to Indco	**Yes** — loan taxed as (deemed) dividend; interest disallowed; treaty relief to the bank may be denied
6 · Subco in NTJ lends its own equity back to Indco	**Yes** — round tripping; interest disallowed
7 · group service company at cost plus	No — transfer pricing
8 · JV shares held via a conduit in a treaty LTJ · 9 · conduit funded by parent sells shares after 5 years	**Yes** — no commercial substance (unless Circular 789 TRC / LOB applies)
10 · choosing the order of liquidation and sale	No — sequencing

[SM 622–628]

CIRCULAR 7/2017 · FAQ ANSWERS

- GAAR and **SAAR can co-exist**; if a treaty's **LOB** sufficiently addresses the avoidance, no GAAR. [SM 628]
- No interplay with the taxpayer's **choice of method**; not invoked merely because an entity is in a tax-efficient jurisdiction. [SM 628–629]
- Grandfathering covers bonus, split / consolidation and compulsory conversions of pre-1 April 2017 holdings — **not leases or loans**. [SM 629]
- Arrangement held permissible by the **AAR**, or sanctioned by a court that considered the tax effect → no GAAR. [SM 629]
- ₹3 crore: per arrangement, per AY, Indian tax only, all parties together. [SM 630]
- No corresponding adjustment for other parties; consistency across years; penalty not automatic (273A available). [SM 630–631]

MEMORY HOOKS

- **"3 crore, 2017, 6 months, HC judge."**
- **Purpose + taint = GAAR.** Incentive taken as the law intends = mitigation, not GAAR. Lies = evasion, not GAAR. Specific rule exists = SAAR first.

SM EXERCISE MCQs

1. GAAR applicable from **01-04-2018**.
2. Not applicable where aggregate tax benefit ≤ **₹3 crore**. [SM 632]

PRACTISE THESE

MCQs D23 (xi), J25 (xiii), D25 (xv), J26 (xv) · MQP (xv) · PTP (xv) · postal (v) · MCQ bank Q73, Q74, Q94, Q95, Q114 · SM short essays 1–2 (when GAAR does not apply; define IAA) · **ICMAI Practice Workbook: no problem on this module**.