

APPENDIX A

SAMPLE GAAR

Set out below is a sample GAAR. It is important to note that this sample GAAR is general in nature and in the form of a simplified legal provision. Importantly, it does not take into account the individual circumstances of any particular tax system. The ultimate form of any GAAR to be adopted by any given country would need to take into account the specific legal tradition and system—including any constitutional limitations—as well as the political and administrative structure and fiscal policies of the country concerned.

Tax avoidance schemes

- (1) This section applies when the Tax Authority is satisfied that:
 - (a) a scheme has been entered into or carried out;
 - (b) a person has obtained a tax benefit in connection with the scheme; and
 - (c) having regard to the substance of the scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person referred to in paragraph (b) to obtain a tax benefit.
- (2) Despite anything in this Act, when this section applies, the Tax Authority may determine the tax liability of the person who obtained the tax benefit as if the scheme had not been entered into or carried out, or as if a reasonable alternative to entering into or carrying out the scheme would have instead been entered into or carried out, and can make compensating adjustments to the tax liability of any other person affected by the scheme.
- (3) If a determination or adjustment is made under this section, the Tax Authority must issue an assessment giving effect to the determination or adjustment.
- (4) An assessment under subsection (3) must be served within 5 years from the last day of the tax year to which the determination or adjustment relates.
- (5) In this section:

“*scheme*” includes any course of action, agreement, arrangement, understanding, promise, plan, proposal, or undertaking, whether express or implied and whether or not enforceable;

“*tax benefit*” means:

 - (a) a reduction in a liability to pay tax, including on account of a deduction, credit, offset or rebate;
 - (b) a postponement of a liability to pay tax;
 - (c) any other advantage arising because of a delay in payment of tax; or
 - (d) anything that causes:
 - (i) an amount of gross revenue to be exempt income or otherwise not subject to tax; or
 - (ii) an amount that would otherwise be subject to tax not to be taxed.