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GAAR in Canada and Relevance for India


Advocate Shashwat Sharma &
Advocate Meyyappan Nagappan

I. BACKDROP

In this Article, we discuss two recent judgments delivered by the Federal Court of Appeal in Canada in connection with the applicability of the Canadian General Anti-Avoidance Rules ("GAAR") provisions. The first case, *Univar Holdco Canada ULC vs. The Queen*[1] was decided in October 2017 in favour of the taxpayer and the Court held that GAAR provisions should not be resorted to the by revenue department unless it could be clearly demonstrated by the revenue department that there had been an abuse of the tax law of Canada.

However, in *Her Majesty the Queen vs. Oxford Properties Group Inc.,*[2] the Court decided in favour of the revenue where it held that a series of transaction was clearly abusive in nature as it led to the payment of minimal tax on capital gains arising from the sale of real estate assets. The Court also discussed the scope of inquiry for the purposes of a GAAR analysis and what questions need to be determined before GAAR is used to disregard a transaction or a series of transactions.

Before delving into these two cases, we have briefly discussed an overview of the Canadian GAAR provisions along with some judicial guidelines that have

1. 2017 FCA 207.
2. 2018 FCA 30.

evolved for the application of these provisions. This is because unlike India which has only recently enacted the GAAR provisions as part of its tax law regime, Canada had introduced such provisions in 1988. Consequently, there exists a rich jurisprudence on the subject in Canada on the basis of which these two cases have been decided.

Lastly, we also discuss how the Canadian GAAR provisions bear a similarity with their Indian counterparts to explain how a review of the Canadian anti-avoidance jurisprudence may become relevant in the absence of Indian judicial guidance on the subject of GAAR. The Canadian experience with GAAR offers some useful guidance to Indian lawyers, tax practitioners, the Indian judiciary and even the revenue officials for the development of the Indian jurisprudence on this subject.

II. BRIEF OVERVIEW OF CANADIAN GAAR PROVISIONS

The general anti-avoidance provisions in Canada are embodied in Section 245 of the Canadian Income Tax Act (the "Act"). This section contains certain important definitions which are essential for an understanding. The term "tax benefit" has been defined under Section 245(1) of the Act as follows:

> *"Tax benefit" mean a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act or an increase in a refund of tax or other amount under this Act, and includes a reduction, avoidance or deferral of tax or other amount that would be payable under this Act but for a tax treaty or an increase in a refund of tax or other amount under this Act as a result of a tax treaty.*

Section 245(2) and Section 245(3) of the Act deal with 'the scope of 'avoidance transaction'. These provisions read as follows:

> *"(3) An avoidance transaction means any transaction*
>
> *(a) that, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than to obtain the tax benefit; or*
>
> *(b) that is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for bona fide purposes other than to obtain the tax benefit."*

III. JURISPRUDENCE DEVELOPED BY CANADIAN COURTS

The judgment of the Supreme Court of in *Canada Trustco Mortgage Co. vs. Canada*[3], is a truly landmark judgment which has often been cited by the Canadian Courts in subsequent decisions. In this case, while determining whether a transaction had been undertaken primarily for tax purposes, the Federal Court of Canada interpreted Section 245(3) of the Act as follows:

> *"Parliament did not intend s. 245(3) to operate simply as a business purpose test, which would have considered transactions that lacked an independent bona fide business purpose to be invalid.*
>
> <u>*The expression "non-tax purpose" has a broader scope than the expression "business purpose"*</u>*. For example, transactions that may reasonably be considered to have been undertaken or arranged primarily for family or investment purposes would be immune from the GAAR under Section 245(3).* <u>*Section 245(3) does not purport to protect only transactions that have a real business purpose. Parliament wanted many schemes that do not have any business purpose to endure.*</u> *Registered Retirement Savings Plans (RRSPs) are one example. Parliament recognized that many provisions of the Act confer legitimate tax benefits notwithstanding the lack of a real business purpose. This is apparent from the general language used throughout s. 245, as opposed to language which would have adopted*

3. 2005 SCC 54.

a broad anti-avoidance test subject to exemptions for specific schemes like RRSP transactions." (Emphasis Supplied).

In the *Canada Trustco Mortgage*[4] case, Supreme Court of Canada also laid down that the following three elements are to be satisfied for the invocation of the general anti-avoidance provisions[5]:

i) There must be a tax benefit[6];

ii) The transaction giving rise to the tax benefit must be an avoidance transaction i.e., the transaction results in a tax benefit and is not undertaken primarily for a *bona fide* non-tax purpose; and

iii) The avoidance transaction giving rise to the tax benefit must be an abusive transaction.

The Federal Court of Appeal in Canada, in *The Queen vs. Spruce Credit Union*[7]*,* held that merely because tax implications played an important role in the decision to undertake a transaction does not lead to the conclusion that the primary purpose of such a transaction is to obtain a tax benefit. Consequently, such a transaction should not be characterized as an avoidance transaction simply on this basis:

"The focus is on the primary purpose of each transaction, its raison d'être. The need to determine the 'primary' purpose implies that multiple purposes can coexist and that both tax and non-tax purposes can be intertwined….The fact that tax implications played a role, and potentially even an important role, in the choice of transaction does not necessarily mean that the primary purpose of the transaction was to obtain a tax benefit and that this was an avoidance transaction."

Regarding the manner of determination of 'primary purpose', the Canadian Court of Appeal in *OSFC Holdings Ltd. vs. Canada*[8] observed as follows:

"As a final observation, I would stress that the primary purpose of a transaction will be determined on the facts of each case. In particular, a comparison of the amount of the estimated tax benefit to the estimated business earnings may not be determinative, especially where the estimates of each are close. Further, the nature of the business aspect of the transaction must be carefully considered. The business purpose being primary cannot be ruled out simply because the tax benefit is significant." (Emphasis Supplied).

Thus, in Canada, it is understood that merely because a transaction results in tax savings, the transaction's "main purpose" cannot be regarded as being a 'tax purpose'. Thus, only in situations where a step has been inserted artificially or where there is apparently no commercial rationale for undertaking the transaction, that the provisions of GAAR can be invoked.

On the scope of Section 245, the Tax Court of Canada in *Jabs Constructions Ltd. vs. The Queen*[9] has recognized that Section 245 should be used judiciously. Relevant extracts of this judgment have been reproduced below:

"Section 245 is an extreme sanction. It should not be used routinely every time the Minister gets upset just because a taxpayer structures a transaction in a tax effective way, or does not structure it in a manner that maximizes the tax".

The Supreme Court of Canada, in *Copthorne Holdings Ltd. vs. Canada*[10], has further observed that caution must be exercised in the application of general anti-avoidance provisions such that it does not have adverse implications on regular transactions.

4. 2005 SCC 54..
5. This was also repeated in *Copthorne Holdings Ltd. vs. Canada, 2011 SCC 63*.
6. Please note that "Tax benefit" under Section 245 of the Act includes tax benefit under a tax treaty.
7. 2014 FCA 143.
8. [2001] 4 CTC 82.
9. 99 D.T.C. 729 (T.C.C.)
10.. 2011 SCC 63.

IV. *UNIVAR HOLDCO CANADA ULC VS. THE QUEEN*

The Federal Court of Appeal in Canada in the case of *Univar Holdco Canada ULC vs. The Queen*[11], while faced with a question over the applicability of the Canadian General Anti-Avoidance Rules to a case of a cross-border extraction of surplus from a Canadian company, held that unless the Canadian revenue authorities can "clearly demonstrate" that the transaction is an abuse of the Act, the Canadian General Anti-Avoidance Rules provisions would not apply to a transaction even if it the primary purpose of such a transaction was to avoid the payment of dividend distribution taxes in Canada.

A. Factual Background

This case dealt with the application of the Canadian GAAR to a situation where a non-resident had acquired control over a Canadian company (on an arm's length basis) and was extracting surplus which had accumulated prior to its acquisition of control from such Canadian company following certain transactions, without triggering a dividend distribution tax under section 212.1 of the Act[12].

Univar NV was a Netherlands public company that carried on a business of acquiring chemicals in bulk and then processing, blending and repackaging them for sale to its customers. It was the parent corporation of a multinational group with operations in several countries, including Canada. Univar NV owned the shares of Univar North American Corporation ("UNAC"), a US corporation. UNAC, in turn, owned all the shares of Univar Canada Ltd. ("Univar Canada"). CVC Capital Properties ("CVC"), company resident in the United Kingdom, made an offer to acquire Univar NV and purchased 99.4% of the shares of Univar NV after receiving the requisite approvals.

Among the Univar group companies, Univar Canada was of particular interest to CVC because it had accumulated a significant surplus by time of the acquisition of Univar NV by CVC. At the time of this acquisition, the adjusted cost base of the shares of Univar Canada was USD 10,000, the paid-up capital was approximately USD 911,729 and the fair market value was approximately USD 889 million.

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11. Supra Note 1.
12. Non-arm's length sales of shares by non-residents

212.1 (1) If a non-resident person, a designated partnership or a non-resident-owned investment corporation (in this section referred to as the "non-resident person") disposes of shares (in this section referred to as the "subject shares") of any class of the capital stock of a corporation resident in Canada (in this section referred to as the "subject corporation") to another corporation resident in Canada (in this section referred to as the "purchaser corporation") with which the non-resident person does not (otherwise than because of a right referred to in paragraph 251(5)(b)) deal at arm's length and, immediately after the disposition, the subject corporation is connected (within the meaning that would be assigned by sub-section 186(4) if the references in that sub-section to "payer corporation" and "particular corporation" were read as "subject corporation" and "purchaser corporation", respectively) with the purchaser corporation,

(a) the amount, if any, by which the fair market value of any consideration (other than any share of the capital stock of the purchaser corporation) received by the non-resident person from the purchaser corporation for the subject shares exceeds the paid-up capital in respect of the subject shares immediately before the disposition shall, for the purposes of this Act, be deemed to be a dividend paid at the time of the disposition by the purchaser corporation to the non-resident person and received at that time by the non-resident person from the purchaser corporation; and

(b) in computing the paid-up capital at any particular time after March 31, 1977 of any particular class of shares of the capital stock of the purchaser corporation, there shall be deducted that proportion of the amount, if any, by which the increase, if any, by virtue of the disposition, in the paid-up capital, computed without reference to this section as it applies to the disposition, in respect of all of the shares of the capital stock of the purchaser corporation exceeds the amount, if any, by which

(i) the paid-up capital in respect of the subject shares immediately before the disposition exceeds

(ii) the fair market value of the consideration described in paragraph (a),

that the increase, if any, by virtue of the disposition, in the paid-up capital, computed without reference to this section as it applies to the disposition, in respect of the particular class of shares is of the increase, if any, by virtue of the disposition, in the paid-up capital, computed without reference to this section as it applies to the disposition, in respect of all of the issued shares of the capital stock of the purchaser corporation.

In order to increase cross-border paid-up capital, two new holding companies were formed. First, an intermediate US holding company was created as a subsidiary of Univar NV and subsequently, Univar Holdco Canada ULC ("UHC") was incorporated as a Canadian subsidiary of UHI. Univar NV then undertook a number of transactions to capitalize UHC with debt and shares, so that the amount of the note payable from UHC to its American parent and the paid-up capital of the shares of UHC held by the American parent before and after the transactions were:

Particulars	***Before (in USD)***	***After (in USD)***
Note Payable	0	589,262,400
Paid-up Capital	911,729	302,436,000
Total	911,729	891,698,400

Thus, post these transactions, the total of the paid-up capital and note payable issued by UHC was equal to the FMV of the shares of Univar Canada. As a result, UHC's US parent company could potentially extract an amount equal to the entire FMV of shares of Univar Canada, through UHC, by repayment of the promissory note and a return of capital on UHC's shares without the incidence of dividend distribution tax on the basis of the exception contained in Section 212.1(4) of the Act[13]. Further, the taxpayer also relied on Article 13 of the Canada-US Tax Convention to claim an exemption from paying Canadian taxes on the capital gain arising as part of the transactions.

The Tax Court of Canada after examining subsequent amendments to Section 212.1(4) of the Act and the commentary released by the Department of Finance to determine that these avoidance transactions were abusive in nature and hence were a fit case for the invocation of the GAAR provisions by the revenue department.

B. Issue

It was not contested by the taxpayer that the series of transactions had resulted in a tax benefit or that these transactions were in the nature of avoidance transactions. Therefore, the main issue before the Federal Court of Appeal was whether the Canadian revenue authorities could be allowed to invoke the GAAR provisions in the Act on the basis that the transactions were deliberately structured to satisfy the conditions of Section 212.1(4) of the Act leading to a misuse or abuse of this provision.

C. Judgment

Section 212(2) of the Act imposes a tax on any dividends that are paid or credited (or that are deemed to be paid or credited) by a corporation resident in Canada to a non-resident person. Capital gains realized by a non-resident person on the disposition of shares of a Canadian corporation may be exempt from tax as a result of a tax treaty between Canada and the country where the non-resident person resides. In the instant case, the taxpayers relied upon Article 13 of the Canada-United States Tax Convention which provides an exemption from tax in Canada on any capital gains realized by a resident of the United States on a disposition of shares of a Canadian corporation provided that the value of the shares is not derived principally from real property situated in Canada.

As part of the transactions, the corporate group was reorganized so that the conditions of sub-section 212.1(4) of the Act were satisfied as the US shareholder of Univar Canada was owned by UHC, immediately before the shares of Univar Canada were transferred to UHC. The Federal Court of Appeal observed that the transactions had already been contemplated at the time that the shares of Univar NV were acquired and were completed very shortly after the closing of the purchase of such shares. Importantly, the Court observed that the shares of Univar NV were acquired in an arm's length transaction and that the impugned transactions were part of the series of transactions by which control of Univar Canada was indirectly acquired.

The Court held that subsequent amendments to the Act and commentary drafted by the revenue department in relation to such amendments do not necessarily confirm that

13. Where section does not apply
   (4) Notwithstanding sub-section (1), this section does not apply in respect of a disposition by a non-resident corporation of shares of a subject corporation to a purchaser corporation that immediately before the disposition controlled the non-resident corporation.

those transactions which were being covered by the subsequent amendments are abusive in nature. In this case Section 212.1(4) had been amended almost a decade after the transaction mentioned above were completed. The Court held that since the transactions complied with the law as it then existed, no adverse inference should be formed from the perspective of a GAAR analysis.

The Court concluded that the same surplus would have been available for extraction from Canada had more conventional Canadian tax planning structures been adopted. Accordingly, the Court did not find these transactions abusive in nature. The Court referred to the landmark ruling in the Copthorne case (supra) and held that unless it could be clearly demonstrated by the revenue department that the transaction is an abuse of the provisions of the Act, the Canadian GAAR provisions would not apply to such a transaction.

V. *Her Majesty the Queen vs. Oxford Properties Group Inc.*

In this case, the Federal Court of Appeal decided in favour of the revenue department and allowed them to invoke GAAR where it found a series of transactions to be abusive of various provisions of the Act which provided a deferral of tax in case of transfer of real property to a partnership and allowed a bump in value. This case involved a situation where the taxpayer managed to avoid paying capital gains tax on the transfer of real assets by relying upon the certain "rollover" and "bump-up" provisions of the Act which are discussed before.

A. Factual Background

Section 97(2) of the Act[14] allows for the deferral of tax consequences of transfers which take place amongst partners and their partnerships on the premise that no tax consequences should be recognized given that there is no fundamental change in ownership as instead of holding the transferred property directly, the transferor holds a partnership interest in that property having the same value[15]. This is referred to as a "rollover" as the transferor's deemed proceeds become the transferee's deemed cost (this may either be Adjusted Cost Base ("ACB") or undepreciated capital costs ("UCC") depending upon the election of the parties) and the tax attributes of the asset being transferred are retained.

We now discuss the various steps of the restructuring exercise undertaken by the taxpayer.

(i) Creation of First Tier Partnerships

The taxpayer engaged in a series of transactions to reorganize the structure through which real property was held. The first step involved transferring the certain real estate assets having a high FMV, low ACBs and undepreciated capital costs **("UCC")** to certain limited partnerships (**"First Tier Partnerships"**). The amounts elected by the partners for these transfers corresponded to the ACB with respect to the land portion of the property (i.e., the non-depreciable capital property) and the UCC with respect to the buildings erected thereon (i.e., the depreciable capital property). As a result, while the FMV of the First Tier Partnerships was high, the partnership interests in the First Tier Partnership had a low ACB. Pursuant to Section 97, the properties held by the partnerships maintained their tax attributes, i.e., their low ACB and UCC.

(ii) Amalgamations

The limited partners of the First Tier Partnerships were amalgamated into one entity. Subsequently, this newly formed entity was amalgamated with its sole shareholder. It is this vertical amalgamation which formed the taxpayer as the sole holder of the partnership interests in the First Tier Partnerships. Section 88(1) of the Act[16], allows a parent corporation to increase the tax cost of the non-depreciable capital property held by its subsidiary at the time of the amalgamation. Since Oxford was formed as a result of a vertical merger, it became eligible to rely upon Section 88(1)(d) of the Act to "bump up" or increase the ACB of the partnership interest it held in the First Tier Partnerships. As a result, while the properties held by the First

14. Text of provisions available at http://laws-lois.justice.gc.ca/eng/acts/I-3.3/page-92.html#docCont
15. Vern Krishna, The Fundamentals of Canadian Income Tax, 9th ed. (Toronto: Thomson/Carswell, 2006) at p. 1112
16. Text of provisions available at http://laws-lois.justice.gc.ca/eng/acts/I-3.3/page-82.html#docCont

Tier Partnerships retained their low ACB and UCC, these partnerships now had high FMVs and the partnership interests held by the partners in these partnerships had a high ACB.

(iii) Creation of Second Tier Partnerships

A second tier of partnerships (**"Second Tier Partnerships"**) was then created in which the First Tier Partnerships were made the partners. The underlying assets were again "rolled over" into the Second Tier Partnerships on the basis of Section 97(2) and the First Tier Partnerships were wound-up. The elected amounts again corresponded to the tax costs, i.e., the ACB and the UCC (with slight variations in respect of land part of the real property). At the time of winding up of the First Tier Partnerships, the partnerships interests in the Second Tier Partnerships were distributed to the taxpayer who again used similar "bump up" provisions of Section 98(3) of the Act to increase the value of its interests in the Second Tier Partnerships.

By the time the above steps were completed, the underlying real property held by the partnerships continued to have a high FMC and low ACB and UCC. The partnership interest held by the taxpayer in the Second Tier Partnerships however, now had a high FMV and a high ACB.

(iv) Disposal of Real Property

The taxpayer transferred its partnership interest in the Second Tier Partnerships to certain tax-exempt entities. As per section 100(1)(b) of the Act, where partnership interests are later sold to a tax-exempt purchaser and a capital gains is realized on the sale of the partnership interests, 100 per cent of the gain on the sale of the partnership interests is deemed to be attributed to the value of depreciable capital property. Since the ACB of these partnership interest had been increased twice, only minimal capital gains were generated by this sale. In fact, in one case, the taxpayer was able to claim a capital loss. This led to a situation where the recapture of deferred tax on transfer of real assets as per Section 100(1) of the Act was avoided.

The Canadian revenue authorities sought to use the GAAR provisions to disregard the benefit of the "bumps" to the ACB of the assets and proceeded to levy capital gains tax on the resulting capital gains. The Tax Court of Canada decided in favour of the taxpayer and the revenue department filed an appeal against this judgment before the Federal Court of Appeal.

B. Issue

The Federal Court of Appeal had to consider whether the series of transactions undertaken by the taxpayer resulting in minimal capital gains being paid on the transfer of real estate assets amounted to abusive tax avoidance and hence, whether this was a fit case for the application of GAAR provisions by the revenue authority.

C. Judgment

The Federal Court of Canada referred to the landmark rulings delivered in the case of *Canada Trustco*[17] and *Copthorne Holdings*[18] where it was established that the following three questions must be asked while determining the applicability of GAAR:

i) Is there a tax benefit?

ii) If yes, whether the transactions giving rise to the tax benefit are avoidance transactions?

iii) Are these avoidance transactions abusive in nature?

In the instant case, it was not contested that the series of transaction undertaken by the taxpayer had led to a tax benefit in the form of a major reduction in capital gains tax being payable on the transfer of real assets. It was also not contested by the taxpayer that the transactions which led to this tax benefit were avoidance transactions.

Thus, the only question which still had to be determined by the Court was whether these transactions would be considered as

17. Supra Note 3.
18. 2011 SCC 63

being abusive in nature. Significantly, the Court emphasized the importance of going into the "object, spirit, and purpose" of a law when determining the question of the abusive nature of a transaction as part of the GAAR analysis. The Court recognized that this may result in an interpretation that is different than a textual, contextual and purposive approach.

Adopting this approach, the Court agreed with the contention of the revenue authorities that these transactions had the effect of defeating the spirit behind the "rollover" provisions of the Act, as these provisions contemplated only a deferral of tax and not avoidance of the same. Section 100(1) of the Act had been inserted with this object.

Interestingly, the revenue department had argued that subsequent amendment to the Act clearly brought out the real scheme of the "bump up" provisions. Hence, the taxpayer was falling on the wrong side of these amendments, was evidence of the fact that the transactions were designed to defeat the real intent behind the legislation. Unlike the case of Univar, the Court adopted a less taxpayer friendly approach in the case of subsequent amendments. It held that where the prior law was drafted keeping in mind the object, spirit and purpose of such law, the amendment does not serve as a new law but rather is only clarificatory in nature. Therefore, even where the amendment took place much later, the Court accepted that these transactions did not operate within the spirit of the law.

The Federal Court of Canada partly allowed the appeal of the revenue department partly on the basis that there had been a misuse of "bump" provisions of the Act by the taxpayer and Section 100(1) of the Act which was designed for the recapture of deferred tax liability was rendered inoperative.

VI. Relevance in the Indian context

The Indian GAAR provisions, which were introduced in the ITA by the Finance Act, 2012, have come into force from April 1, 2017. GAAR confers broad powers on the tax authorities to deny tax benefits (including tax benefits applicable under tax treaties), if the tax benefits arise from arrangements that are 'impermissible avoidance arrangements'. The coming into force of the GAAR provisions have many taxpayers worried as tax authorities have been empowered by these provisions to disregard corporate structures, recharacterize debt as equity, etc., in situations where the tax authorities deem a transaction or a series of transactions to be an impermissible avoidance arrangement.

To allay taxpayer concerns and to provide them some certainty, the CBDT released a Circular on January 27, 2017 ("GAAR Circular") to issue clarifications regarding the applicability of the GAAR provisions after considering the submissions of a working group which took into account public comments. While the GAAR Circular sheds some light on how the CBDT intends to apply the GAAR provisions, the use of ambiguous and open-ended language results in persisting lack of clarity on the practical implementation of these provisions. As a result, taxpayers remain concerned about the potential misuse of these provisions by the revenue authorities. Their fears are compounded in the absence of any judicial guidance on the subject. In view of the same, it should be relevant to examine the legislations and corresponding judicial precedents of other countries which lay down the scope and limitation for interpretation of a general anti-avoidance rule.

As per Section 96(1) of the ITA, an *'impermissible avoidance arrangement'* is an arrangement entered into with the main purpose of obtaining a tax benefit and satisfying one or more of the following:

a) non-arm's length dealings;

b) misuse or abuse of the provisions of the domestic income tax provisions;

c) lack of commercial substance[19]; and

d) arrangement similar to that employed for non-bona fide purposes[20].

From a perusal of the above, it is apparent that the 'tax avoidance' test under the Canadian GAAR is strikingly similar to its Indian counterpart. Akin to the Indian 'main purpose' test, Canadian GAAR defines a 'tax avoidance transaction' as *"results directly or indirectly in a tax benefit, unless the transaction is carried out primarily for bona fide purposes other than to obtain the tax benefit"*[21]. Both the Indian and the Canadian GAAR are aimed to tackle transactions which (1) result directly or indirectly in a tax benefit; (2) except where the transaction is primarily for *bona fide* purposes; and (3) include even series of transactions.

Owing to the glaring similarities between Canadian GAAR and Indian GAAR, the interpretation on the scope of the Canadian GAAR provisions being adopted by Canadian courts may be considered as having persuasive value by Indian Courts when they are called upon to decide the taxability of transactions in light of the Indian GAAR provision as included in the ITA.

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19. As per Section 97 of the ITA, an arrangement is deemed to lack commercial substance, in case (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; (b) it involves or includes round trip financing, an accommodating party, elements that have effect of offsetting or cancelling each other; or 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; (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; or (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 tax benefit.
20. Section 102 of the ITA contains certain definitions for the interpretation of Chapter X-A of the ITA including for "arrangement" as follows:
    "(1) "arrangement" means any step in, or a part or whole of, any transaction, operation, scheme, agreement or understanding, whether enforceable or not, and includes the alienation of any property in such transaction, operation, scheme, agreement or understanding;
21. Section 243 of the Canadian Income Tax Act.

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