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ACKNOWLEDGMENTS AND MESSAGES

A. PEARLS OF WISDOM: REFLECTIONS FROM INDIAN JUDICIARY

Justice A.K. Patnaik, Former Judge, Supreme Court of India

General Anti-Avoidance Rules (GAAR) are a recent development in India since 2012-13. Though Chapter X-A of the Income Tax Act, 1961 on GAAR has very few sections, a large number of colourable transactions through which Income Tax can be evaded by the Assessee may be hit by these few provisions of GAAR. As yet, there are not many judgments of High Courts and the Supreme Court on these provisions of GAAR. Mr. Mukesh Butani and Mr. Tarun Jain, very well-known professionals in taxation law, have compiled and edited a collection of essays by tax experts, tax administrators, eminent lawyers and former judges having knowledge in the field of income tax law. This treatise, which is going to be published shortly by Thompson Reuters, will be of great help for Judges, Advocates, Chartered Accountants and Tax & Corporate Professionals in appreciating the intricacies of GAAR.

Justice Kurian Joseph, Former Judge, Supreme Court of India

The subject of taxation broods one of the most complex sets of laws. The judiciary has hence evolved various rules of statutory interpretation, some of which are peculiar and specific to fiscal legislations. GAAR undoubtedly, will add fuel to the trend. For the judiciary to definitively expound upon the GAAR law, it must appreciate the different versions and finer nuances. Undertaking the herculean effort to bring together the sane voices of experts, representing all quarters and stakeholders of the tax ecosystem, this treatise does yeoman service to the cause of demystifying GAAR law.

Tenor and contours of the provisions might witness a strenuous judicial contest, miles beyond other statutory provisions in fiscal legislations. The treatise, thus, rightly christens GAAR as 'the last tax frontier'. Furthermore, the declaration of the legal position will *inter alia* require traversing through the legislative history, appreciation of the underlying legislative intent, jurisprudential reflections from other jurisdictions, academic delineations and critique, etc. The treatise on this count as well scores highly to position itself as a comprehensive reference point being the repository of authoritative perspectives on these multi-dimensional points of inquiry. Put pithily, the treatise is a treasure-trove for beginners to experts seeking to quench their thirst on GAAR.

My hearty congratulations to the authors and publishers. I wish this novel and academic endeavour initiated by the editors Shri. Mukesh Butani and Tarun Jain, all the best.

Justice Vibhu Bakhru, Judge, Delhi High Court

Introduction of GAAR in India is in line with the way the Indian Tax policy and legislation have evolved as they become more in step with the changing tax landscape globally. The manner in which GAAR is implemented will be determinative of whether it is effective and serves its purpose. Like all legislations that confer subjective powers, the risk of GAAR being implemented in a selective and oppressive manner is real.

In a matter as subjective as GAAR which is evolving and open to perspectives – an anthology of articles will provide a repository which will be of immense help to tax practitioners and administrators, alike.

Justice Shekhar B. Saraf, Judge, Calcutta High Court

The exquisite curation of myriad and incisive articles by legal doyens, tax officials and consultants intertwined with views on the kaleidoscopic issues on GAAR by the sharpest minds lead me to the inescapable conclusion that this treatise is a must read for all tax professionals globally!

J. Justice R.V. Easwar, Former Judge, Delhi High Court

GAAR has the potential to change the entire game. In the hands of an ever-suspicious, over-enthusiastic, target-driven tax officer, it can be a real demon; in the hands of a sensitive, disciplined and objective tax officer, it can really and effectively serve the purpose for which it was brought in. As GAAR has the potential to nullify the provisions of the Income Tax Act, it should be used more like a watch-dog and not a blood-hound.

[The Treatise has] a very impressive array of authors and I am sure the views expressed therein will constitute very useful inputs in the matter of approaching the GAAR provisions.

Justice P.P. Bhatt, President, Income Tax Appellate Tribunal

GAAR law in India is in tune with best practices worldwide and absolutely unavoidable due to inherent limitations of a relatively static income tax law interacting with dynamic business situations worldwide. Yet, there are bound to be apprehensions about its actual working. That is where Mukesh Butani, an eminent expert in Indian tax laws, has done a great job in demystifying this complex subject by highlighting varied and fascinating perspectives on Indian GAAR legislation and by setting out the true context and correct application of this challenging branch of law in simple words.”

B. INDIAN LEGAL EXPERTS

Maninder Singh, Senior Advocate and Former Additional Solicitor General of India

“General Anti Avoidance Rules (GAAR) have been at the center of extensive debate and discussion in India as well as internationally, for quite some time. It is universally acknowledged that there is an imminent need for anti-avoidance provisions to safeguard countries from tax avoidance arrangements through an ever-growing concept of ‘tax havens.’ However, it is also a fact that overzealous tax authorities cannot be permitted to apply these provisions to genuine transactions and strategic tax-planning, as it discourages foreign investments and leads to serious damage to the country’s economy.

After much debate, discussion and deferment, the GAAR provisions in India have finally become applicable from Assessment Year 2018-19 onwards. There is a perceived apprehension that the provisions give a very wide discretion to tax authorities which, if exercised improperly, can create an atmosphere of uncertainty for any potential foreign investor. It is to be seen how the GAAR provisions shall be applied by the tax authorities and whether the stated objective of preventing tax avoidance arrangements – is achieved. Past experience shows that there is a considerable scope for disputes and litigation in this area.

I congratulate Mr. Mukesh Butani and Mr. Tarun Jain, Advocates for compiling the opinions and insights of various legal luminaries on the issues surrounding the concept and implementation of GAAR in India as well as internationally, in their Book “GAAR: The Final Tax Frontier”. It also contains an interesting critique of the GAAR regime with varying views and opinions shared by different legal luminaries. The apparent painstaking exercise of compilation of various views covering a whole different critical aspect and placing them in a very efficient and rational manner at one place, would indeed be very useful to the readers. I recommend this Book to all tax practitioners. It would serve as an important tool for dealing with the issues which are bound to arise from the implementation of GAAR in India.”

Pinky Anand, Senior Advocate and Former Additional Solicitor General of India

GAAR is relatively new in India. As Anti-Tax Avoidance laws are rapidly changing, the domain of law is new and is still unexplored. This book will definitely serve as an essential guide. It gives a comprehensive view from the vantage point of some of the biggest legal luminaries of the country. It will provide valuable guidance for lawyers and taxpayers, especially on the significant difference between tax saving and tax avoidance.

Porus F. Kaka, Senior Advocate

"I congratulate you on the launch of "GAAR: The Final Tax Frontier" a collection of essays as a Treatise on GAAR Law.

This is an extremely timely publication, coming at a time when GAAR comes into force in India. It will be greatly welcomed by both Tax Payers, Tax Administrators and Corporates alike. GAAR has had a chequered introductory history in India – of being introduced, deferred, amended to reach its final avatar in the present Act. The Government took in many recommendations and introduced checks and balances, before the final version was rolled out. Even though one may hope for further clarity and elucidation the process of introduction has been comforting.

This book with essays from all sides including Judges, Senior Professionals, Economists, Academics and also equally importantly former and current Members of the Indian Administration and foreign experts will be undoubtedly a valuable source of reference as we enter the "GAAR era."

I extend my best wishes for this publication."

N. Venkataraman, Senior Advocate & Additional Solicitor General of India

Indian Tax System has evolved over the decades through JAAR (Judicial Anti-Avoidance Rules). Income Tax Act, 1961 is replete with provisions in the form of SAAR (Special Anti-Avoidance Rules) to address specified contingencies. The growth of cross border transaction has created the need to bring in legislative stability and uniformity and avoid uncertainty in taxation, thus resulting in GAAR (General Anti-Avoidance Rules).

It is imperative for all the players to follow the rules of the game for GAAR to achieve its objective. Or else, it would become one more law, which would see a long journey culminating in the Supreme Court and emerging as nuanced principles of JAAR.

A great effort in bringing the best minds across the globe to share their knowledge, which is bound to benefit the entire tax spectrum comprising of Administration, Businessmen, Professionals and Students.

M.S. Syali, Senior Advocate

The editors have always ably pioneered, as now, a comparatively nascent field. The compilation is an admirable collection of jurisprudential, pragmatic and analytic detail—a must read!!

Ajay Vohra, Senior Advocate

Mukesh and his Co-editor, Tarun Jain have, once again, through their pioneering efforts, compiled this treatise – GAAR: The Final Tax Frontier, which is an assimilation of articles/comments of the Who's Who in the field of taxation, both domestically and internationally. GAAR is today part of the Indian domestic tax law; given the subjectivity attached to the provisions, taxpayers and tax experts are apprehensive how this would practically be implemented by the Revenue authorities at the ground level? Would invocation of GAAR become a tool for routine revenue-raising, leading to long drawn litigation and consequent harassment for the taxpayers, despite the safeguards? This treatise promises to provide differing perspectives from across the globe on the nuanced provisions of GAAR through contributions from eminent experts.

I am sure this first of its kind compilation would provide thought-provoking and stimulating views, which should provide guidance to the taxpayers and the Revenue on how to 'tread with care'.

The two Co-editors need to be complimented for bringing out this much needed, must-read treatise on a vexed subject.

Balbir Singh, Senior Advocate and Additional Solicitor General of India

There are always few milestones in every country's economic path. GAAR is such one milestone in Indian tax legislation and administration, which is going to play a significant role in fulfilling her desire to attract sustainable foreign investment and technology. In this pursuit, the responsibility lies on the tax administration to keep the path unambiguous and certain in implementation of relevant provisions. The legislative authority to recharacterize business arrangements brings in big responsibility to practice restraint in questioning genuine business arrangements. At the same time, it is equally important for a private enterprise to keep its affairs commensurate to its true commercial intent and objective. It is a tight rope, but both the sides need to balance their respective interests to enable economy to prosper and businesses to grow.

This treatise is a brilliant effort by Mukesh Butani and Tarun Jain, who have contributed immensely towards international tax jurisprudence in this country. This ensemble gives a pragmatic view of relevance of anti-avoidance measures in the Indian context and critique of past experiences alongside international experience. I find it unique, as it is not a commentary, yet it brings on table, viewpoint of eminent experts on range of aspects concerning GAAR. Congratulations!

Lalit Bhasin, Founder and Managing Partner, Bhasin & Co

It is with great pleasure for me to be associated with the release of the treatise ‘GAAR: The Final Tax Frontier’, a repository of curated essays on General Anti-Avoidance Rules in the tax laws. The treatise is a seminal contribution to the tax literature and assimilates wide-ranging prisms of inquiry, perhaps leaving no stone unturned in the quest to unravel all shades of GAAR law and policy. By sewing together experts in various fields, from India and abroad and weaving an intricate mesh of the framework in which the GAAR law should be viewed, the editors deserve all praise and congratulations for their stewardship and efforts to familiarise the less enlightened ones with this complex law. With contributions ranging from the senior members of the bar and tax-administration to renowned academicians and experts, the treatise is a worthy possession, equally for students to practitioners in this branch of law. This treatise would, without doubt, serve as a guiding beacon in the shaping of the Indian GAAR law.

V. Lakshmikumaran, Founder and Managing Partner, Lakshmikumaran & Sridharan Attorneys

After being deferred on multiple occasions, the provisions relating to General Anti-Avoidance Rules (‘GAAR’) became effective from Assessment Year 2018-19 onwards. The concise yet complex provisions relating to GAAR seek to grant enormous powers to the tax authorities to disregard the form of the arrangement which is designed merely to obtain a tax benefit and assess such arrangement (or a part of it) as per the substance of the transaction. Although, the concept of ‘substance over form’ is not unheard of in India and finds judicial recognition in a plethora of cases, the provisions relating to GAAR grant legislative sanction to this approach and go a step beyond to ensure that the tax authorities in India get their fair share of taxes. The provisions have the potential of unsettling a number of international and corporate tax positions and, therefore, will have a major impact on how inbound and outbound investment and other business transactions are structured. The compilation of the writings of various experts in this book provides an interesting insight into numerous challenges that may be faced by the taxman and taxpayers on account of GAAR.

C. INDIAN FISCAL POLICY EXPERTS

N. Rangachary, Former Chairman, Central Board of Direct Taxes and Member, Dr. Shome Committee on GAAR

The two phrases tax evasion and tax avoidance that we have often heard of form the basic core of the Revenue Department’s approach to work in India. Till a few years ago, we had been raised in the belief that while tax evasion was despicable, illegal and had to be shunned, tax avoidance was an allowable belief though it could be considered

immoral. Morality and equity have never been the guideposts to taxation. Even the Supreme Court had classified tax avoidance as a permissible exercise permitted by law.

Income tax legislation of 1922 and the present one of 1961 had always looked down on these exercises. While a complete set of anti-adoption and penal measures was built into law to take care of evasion on the concept of avoidance, not many restrictive covenants were adopted by Revenue. It must be recognised that the coterie of tax experts and financial wizards had often adopted measures that challenged Revenue and its practices and beliefs. In fact, in those situations, Revenue always was a couple of steps behind the intricate and daring methods adopted by the taxpayers. Any and every decision of the tribunal and the courts gave an opportunity to the government to modify, amend and rewrite parts of the Act with the result that the Act today resembles a compilation of offences and penalties. Generally accepted principles and concepts have been discarded and an array of fresh and sometimes unacceptable commercial practices have been prescribed for adoption. A look at Section 2 more particularly at the definition of the term 'income' will establish the fact how unrealistic some of the prescriptions are.

The Government till very recently held back its hands to legislate on the avoidance measures. Possibly a move in that direction became necessary with globalisation and the growth of multinational companies including Indian ones establishing themselves. The spread of private equity culture aided and abetted this growth. By a careful and systematic planning, organisations developed themselves into world-beaters but not paying adequate taxes on the incomes earned. Despite the availability of double tax avoidance agreements, accepted canons of commercial law and practice were being reformulated and great efforts taken to avoid paying taxes. The larger and wealthier these organisations became, the taxes paid by them became lower and lower. Steps to stop this had to be initiated at the international level, and OECD became the flag bearer in this exercise.

In India, Revenue took measures to identify some of the practices and specific legislation was brought in. We had an extensive modification of the provisions dealing with income, its accrual, residence, business transactions etc. We had a separate chapter built into the Act that specifically dealt with transfer pricing. The efforts to identify situations that caused Revenue to worry itself on its shrinkage grew manifold. This was felt universally. The common thread that ran through most of the commercial enterprises was to avoid paying taxes on incomes and this was sought to be achieved by resorting to transactions seemingly normal but underlying which was the avoidance of paying proper taxes on incomes. We could identify methods to achieve this by seeking to play with the philosophies of residence, control, lease or buy, ownership or renting, etc. since the main motive of all these efforts and measures was to minimise the Income tax liability, powers were taken to question such transactions.

In some jurisdictions the operating lever got utilised when it was established that the main reason for the arrangement was not to pay proper taxes. India has followed this. In many jurisdictions the operation of the powers was to be done even if tax minimisation was only incidental. Thus, it is seen that the General Anti-Avoidance Rules are now almost universal. It may be felt that in an era of international cooperation where resources flow freely across territories with the object of maximisation of economic benefits, the feature of tax minimisation is incidental and should not be penalised. Well-thought-out plans of dispersal of activities purely on economic reasons are not to be treated as tax avoiders. This possibly will have to be considered by Revenue before invoking the sections. This raises a very interesting issue.

Chapter XA does not indicate how the powers are to be exercised, by whom and how. The powers under the chapter are very fundamental and should be subjected to proper scrutiny. There are in the tax department different levels of assessing and supervisory personnel and equity and justice demand that the Sections should be invoked by officers only after a proper authority of scrutiny like a Chief Commissioner after affording an opportunity to the taxpayer being heard. In the background of faceless assessments now being ordered as normal in the Department, there should be a serious thinking on this issue. One more thing to be noticed is the fact that anti-avoidance measures are found mentioned in the Act as a general measure in Chapter-XA and also in Chapter-X and specifically in various other Sections. Do we require this scattering around? Some thought has to be given to this.

A very powerful weapon has been designed by Revenue. How effectively should this be used is to be designed carefully. Which is more useful to society and its growth—tax collections or economic growth? We have to balance these conflicting demands and adopt one that suits us. This is a great responsibility that requires recognition.”

T.V. Mohandas Pai, Chairman, AARIN Capital Partners

GAAR is a new addition to Indian tax laws, to meet the challenges of extensive tax planning by corporations who derive incomes around the globe! While nations have a legitimate right to tax revenues for incomes within their jurisdiction, very so often they claim extra-territorial jurisdiction to prevent tax evasion. While GAAR, through clear, transparent rules, can enhance certainty in the tax positions, India must benchmark against Best-in-class global GAAR frameworks to reduce litigation and enhance ease of doing business! This very welcome volume seeks to throw light on India’s GAAR and the way forward.”

Rajiv Memani, Chairman, India Region, Ernst and Young

GAAR as a powerful tool for checking tax avoidance and having a deterrent effect on aggressive taxpayers, should be used only as a last resort after exhausting all other legal remedies and SAARs. The deterrent effect of GAAR is evident in practice where

all major business transactions and foreign investments in India are evaluated for GAAR implication by taxpayers before implementation. Any reckless use of such a powerful weapon is likely to cause huge damage to the painstaking efforts taken by the Government over several years to build trust with the taxpayers through a non-adversarial tax regime. This makes role of GAAR panel which, on an application by Tax Authority, is entrusted with responsibility of declaring an arrangement to be covered by GAAR, very critical. I am sure, all stakeholders will immensely benefit from the wisdom and experience shared in this collection of essays by prominent personalities and experts in India and across the globe, ably edited by Mukesh Butani and Tarun Jain. The 360 degree perspective of the contemporary subject along with experiences in other countries will guide taxpayers, tax practitioners and tax administrators in India to ensure that it is invoked and applied only in 'rarest of rare' cases.

Nishith M. Desai, Founder & Managing Partner, Nishith Desai Associates

While the object and purpose of GAAR is understandable and lot has been said on what needs to be said, it is important to bear in mind that constitutional principles of fairness and reason should be strictly complied with.

Social contract theory sets out what a Government can and cannot do. How can a citizen or even a foreign investor be expected to decipher legislative intent except by reading the language of the law?

The rule of law requires absolute responsibility on government and legislature to draft laws carefully to avoid misinterpretation of law and cumbersome determination of parliamentary intent, which in the context of GAAR can at best be regarded as nothing but a myth!

Thank you, Mukesh, for doing a wonderful job in bringing yourself and other thought leaders together to unfold the mystic of GAAR so that it can achieve its desired objective.

Bobby Parikh, Co-founder, BMR Advisors

At the level of principle, provisions that seek to apply taxation based on the underlying substance of a commercial transaction or arrangement rather than being guided purely by form, which may be contrived, is unexceptionable. Indian courts have extensively considered and ruled on arrangements which the courts found to be lacking in commercial substance or employed colorable devices to deny tax rightfully due to the Government. This the Courts have done even without GAAR provisions having been codified into Indian tax legislation. As a low trust society with over-stretched courts, reaching finality on tax disputes tends to be a long drawn process. Until we are meaningfully able to address this, we could have done without GAAR.

Rajeev Dimri, Co-founder, BMR Advisors

This treatise on GAAR could not have come at a more opportune time. As a new international tax order emerges on the cornerstones of value creation and substance over form, domestic GAAR in tax statutes, in the backdrop of the intriguing debate of tax avoidance and legitimate tax planning, will increasingly assume importance. While the inherent subjectivity of GAAR may engender uncertainty, through the incisive analysis of the esteemed authors, the book demystifies this potent deterrence tool in the Indian context. To quote a few, interplay of GAAR with Principal Purpose Test under MLI, domestic SAAR with GAAR are questions which every taxpayer is confronted with today.

Gokul Chaudhri, Global Business Tax Leader and Partner, Deloitte

India introduced General Anti-Avoidance Rules given the anxiety of the policymakers towards treaty abuse. This concern is illustrated by the FAQ which had 16 illustrations around treaty shopping and the like. India subsequently renegotiated the contentious clauses in its tax treaties with Mauritius and Singapore, and subjected its treaties to the global anti-abuse measures concluded in the Multi-Lateral Instrument. The application of GAAR, therefore, to treaties should no longer be the focus of the tax administration. Re-purposing GAAR is, therefore essential. This could be followed by an explicit public articulation that GAAR will no longer be applied for treaty override. Such a development could allay the concerns of investors, facilitate the ease of doing business in India and provide tax certainty on the flow of funds.

Renu Narvekar, Global Head – Tax, Tata Consultancy Services

The introduction of General Anti-Avoidance Rules (GAAR) is a momentous event in the evolution of India's tax policy and legislation. GAAR empowers the Revenue authorities to deal effectively with and guard against schemes that are designed for tax avoidance. It strengthens their arms by giving them sweeping powers to disregard or re-characterize transactions and re-determine the resultant tax consequences if such transactions are designed with the main purpose of availing tax benefit(s) or if they lack commercial substance. Many developed countries have implemented GAAR, and over the years, some of these countries have developed and implemented jurisprudence on the subject.

In India, GAAR has been made effective from 1 April 2017. Historically, while there have been several Specific Anti-Avoidance Rules (SAARs) in its tax law, India did not have a codified GAAR and most anti-avoidance principles were based on judicial precedents. With its codification, judicial precedents will be re-evaluated through the

prism of GAAR. Therefore, it is essential to understand the fine line between acceptable tax mitigation and actual tax avoidance.

The treatise GAAR: *The Final Tax Frontier?* is an excellent compilation of views and insights on GAAR by renowned professionals, academicians, experts and legal luminaires. In the complex world of GAAR, this treatise will serve as an exceptional reference guide for all tax practitioners, assisting them in understanding the nuances and navigating through the challenging GAAR provisions. Kudos and best wishes to the co-editors, Mukesh Butani and Tarun Jain, the authors and publishers for this invaluable publication!

Shikha P. Gupta, Tax Director, Hindustan Unilever Limited

GAAR is one of the rare subjects in taxation that can claim no single person as an expert due to the abstract principles and perceived discretion in their application. In India its implementation was preceded by a long haul of debate and discussion. As a tax professional, when considering legitimate business transactions, one often struggles to determine with reasonable clarity the boundaries that GAAR can impose. I am therefore delighted to see a seminal compilation by Mukesh Butani and Tarun Jain on the subject to illuminate multifarious perspectives on GAAR and bring its application to life.

D. INTERNATIONAL FISCAL POLICY EXPERTS

YKJ Yeung Sik Yuen, G.O.S.K, Former Chief Justice of Mauritius

“Mr. Mukesh Butani and Mr. Tarun Jain, Co-editors, and the team at BMR Legal deserve to be congratulated for undertaking the study, editing and publication of this important treatise on GAAR.

This much welcomed treatise has its purpose to bring together some of the world’s leading personalities on the subject to share their views and experience under one cover. The hopeful, and I am sure achievable, effect of the treatise is that it is not only a reputable academic study but also a hands-on guiding tool, which brings out the nuances of GAAR law and its complexity in the context of changing landscape and practices around the world.

From its Introduction, through its substantive parts on Tax Administration Perspective, the Assessment of the Interplay of GAAR, the Judicial Response, the Outside View and the Global Experience on GAAR, the treatise very appropriately wraps up and diffuses the individual views of some 50 eminent contributors, some of them writing on very thought-provoking subject-matters and titles which immediately arouse curiosity and interest. I would like here to make special mention of the very first title in the treatise authored by the co-editors which reads: “Why ‘Tax Morality’ and

‘Overarching Principles’ Should Give Way to ‘Text’ of Law? In Memory of Late Justice S.H. Kapadia, Former Chief Justice of India.”

The authors come from various countries and jurisdictions, including Brazil, Canada, Colombia, Japan, Singapore, South Africa, etc. Whilst the bulk of authors are understandably from India, I am glad that Mr. Rajesh Ramloll, S.C, Assistant Solicitor General, from Mauritius is also a contributor.

I am sure that this is a treatise which everyone interested in GAAR will enjoy reading and find to be informative. I have no doubt that it will find its place in many libraries and I can only wish it all the good success it deserves.”

Philip Baker, Barrister and Queen’s Counsel

The adoption of a GAAR by India is a significant move in the history of taxation in the country. It is a recognition that it is necessary to have a statutory basis for a broad approach to countering unacceptable tax avoidance, and that a process of continuously adopting specific anti-avoidance rules as different arrangements are identified may not be adequate to protect the tax base. However, as with any broadly drafted legislation, it is not simply the wording of the GAAR but how it is applied in practice that matters. Important safeguards, like an independent monitoring committee, are crucial. Equally, the courts will play a major role in interpreting and supervising the application of the GAAR.

Murray Clayson, President, International Fiscal Association

The imposition of tax by government in a civilised society rests on the foundation of democratic consent; the permission so conferred requires government to enact only reasonable laws, and solemnly to respect the rule of law. Such considerations demand a high degree of legal certainty, so that citizens know where they stand, and can resist official overreach through the justice system. The framing and administration of a GAAR may tend to strain these crucial principles: the adjective ‘general’ inherently has the potential to introduce vagueness; and notions of substance, or what is unreasonable, artificial, abusive or ‘not ordinary’ are liable to introduce subjectivity. Risks thus presented may be mitigated in the case of a carefully targeted and independently supervised GAAR – the attention of which is concentrated upon what may be termed ‘egregious’ tax schemes. In this light it will be fascinating to see how the India GAAR is applied in practice, and how it will be judicially interpreted.

Peter Barnes, Former U.S. Deputy International Tax Counsel at the U.S. Treasury Department’s Office of Tax Policy

When a tax examiner invokes a GAAR, both the government and the taxpayer begin a journey to the unknown; the GAAR is only used when specific rules do not apply.

The uncertainty is particularly challenging in India because the Indian courts have not yet decided enough cases under the GAAR to create legal guardrails. We are fortunate to have Mukesh Butani, an insightful and clear-thinking tax leader, and his colleagues provide this new treatise on the Indian GAAR. The essays help illuminate the path as the government and taxpayers shape proper contours for the powerful tool that is the GAAR.

Jonathan Peacock, Queen's Counsel

The present health and economic difficulties will, over time, inevitably mean a greater focus on tax raising and so your treatise on the GAAR in India and elsewhere is very timely. I very much look forward to its publication.

For my own part, the GAAR in India (like its counterparts in the UK and elsewhere) provides a considerable weapon for the Tax Authority faced with complex transactions and imprecise or imperfect statutory regimes. That said, the existence of the GAAR inevitably brings with it uncertainty for taxpayers, with the real risk that it deters or inhibits otherwise attractive investment into India. In the UK, the GAAR has been used very sparingly so far and, in each case, only against the most artificial arrangements. I would very much hope that the same is true in India and that the GAAR does not become a catch-all whenever the Tax Authority feels that it is losing an argument.

I am sure that these points are well made by your fantastic group of contributors who can offer real insight into the difficulties of striking the right balance between encouraging entrepreneurial activity and raising tax revenue.

Best of luck with publication!

***Prof. Dr. Stef van Weeghel, Global Tax Policy Leader, PwC, Chair,
Board of Trustees, IBFD, Professor of International Tax Law, University
of Amsterdam and Immediate past Chair Permanent Scientific
Committee, International Fiscal Association***

Ideally a legal system reflects the culture and norms prevailing in a society. And the legal system is operationalized, *inter alia*, through statutes, regulations and court decisions. Whether a sophisticated legal system needs anti-abuse rules, such as a written or unwritten GAAR in tax law, is debatable. One could take the view that in a purposive interpretation of the law the outcome always satisfies object and purpose of the written rule. But increasingly, and particularly in the tax world, a need is felt for statutory GAARs. One could see GAARs as a safety valve for the system. They create tension and a barrier for those who explore the boundaries of the system. The Indian GAAR is no different. It is from a fairly recent date and it will be interesting to see how its deployment and interpretation evolve over time and to what extent the outcome will be

different from that of internationally known Indian cases such as *Azadi Bachao Andolan* and *Vodafone*. The collection of essays in this book brings together an incredible roster of leading authors with authoritative views on the Indian GAAR from their different perspectives. It will make this book a very valuable resource.

William H. Morris, Deputy Global Tax Leader, PwC, Head of Tax Bureau for OECD-BIAC

This a remarkable survey book, pulling together noted scholars, practitioners and current and former policymakers. Authors argue vigorously for and against the use of GAARs. Having had some involvement in the development of the UK GAAR, I understand the pitfalls of GAARs. Nevertheless, I also believe that the potential (even if, sadly, not often realized) for replacing ever more complex specific anti-avoidance rules with a GAAR that discourages overly aggressive activity, while not discouraging sensible interpretations of the rules, is one worth aiming for. This collection of essays will help inform and shape the on-going debate.

David Rosenbloom, Member, Caplin & Drysdale, Director, International Tax Program

No taxpayer wants to pay more tax than is required by law. Inevitably, there will be planning to reduce or eliminate tax liability. Is that abusive? Always? If not always, when? GAARs are a vehicle for addressing these questions, but they are cast in the most general of terms. The essays in this volume seek to fill in the gaping blanks. Drafted by some of the leading figures in the international tax field, the views expressed in these pages will add immeasurably to the growing consensus about what is, and is not, 'abuse'.

Marc M. Levey, Principal, Baker & McKenzie LLP

The General Anti Avoidance Rules, known as GAAR, are a critical component of any countries tax laws who wish to ensure compliance and avoid abuse. The OECD in its Base Erosion Profit Shifting Actions has made this abundantly clear and many countries have followed this initiative. Enacting the law is only one part of the challenge; enforcing it in a fair and measured way is the next challenge. These actions are critical to a dynamic economy as India. Having leaders as Mukesh Butani and the pristine contributors he has assembled should prove to be an essential and thought-provoking work for any practitioner doing business in India.