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# GAAR and prevention of tax avoidance

# Terminology

- Tax avoidance and tax evasion frequently not distinguished properly
  - (en.) Tax avoidance = (fr.) Evasion fiscale
  - (en.) Tax evasion = (fr.) Fraude fiscale

# The 4 Elements of the Concept of Tax Avoidance

- Taxpayer carries on actions permitted under private law
- With a motive of saving tax
- By using atypical ways for achieving his economic goals
- Complies with all disclosure obligations

# The 4 Elements of the Concept of Tax Avoidance vs. GAAR

- ~~• Taxpayer carries on actions permitted under private law~~
- **With a motive of saving tax**
  - Motive test – various degrees of purposes for taxpayer's actions
    - Sole motive, main motive, one the main motives, etc
- **By using atypical ways for achieving his economic goals**
  - Description of taxpayer's arrangements and their justification
    - No business purpose, non-genuine, artificial, etc.
- ~~• Complies with all disclosure obligations~~

# GAAR - particularities

- It does not prevent tax evasion
  - Disclosure complied by the taxpayer
  - Not to deem missing facts
- It applies once the facts are correctly established
  - Taxpayer's arrangements & motives
  - Economic goal is clearly identified
- It allows the tax authority to tax the economic goals achieved by the taxpayer regardless the means they have been achieved
- It applies as the measure of last resort – when no TAAR/SAAR applies

**Thank you!**