

**IFA REPORT:
ANTI-AVOIDANCE MEASURES OF GENERAL NATURE AND
SCOPE
GAAR AND OTHER RULES**

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Where we are : General presentation of the report

- General
 - Legal basis para 6 StAnpG – 4 criteria
 - Procedural aspects: the burden of proof
 - Taxpayer's intent
- Consequences
- Conflicts between GAARs or between GAAR and SAAR
- Case law on statutory or court-developed GAARs
- GAAR and taxpayer's safeguards (strict interpretation, ATA, procedural aspects)

The 4 cumulative criteria

- the use of legal forms and institutions of private law (use of tax regime excluded)
- a tax economy through the circumvention or reduction of the tax burden (not the application of tax provisions)
- the use of an inappropriate path (the intent of the law, arm's length aspects, economic reality, structure seen as a whole);
- the absence of non-tax reasons justifying the use of the chosen path (the most important criterion, the goal(s) of the taxpayer).

GAAR vs SAAR

- StAnpG-GAAR and transfer pricing SAAR
- SAAR of the P/S directive
- Treaty GAARs and SAARs (MLI / PPT)
- 2019 ATAD

What's next: the new GAAR

- To defeat the ~~tax burden~~ object of tax law
- With the use of legal forms and institutions of ~~private law~~
- One of the main purposes* to reduce or circumvent its tax burden
 - * Not in the draft directive - question of the least taxed way.
- Through non-genuine arrangements i.e. arrangements not put into place for valid commercial reasons which reflect economic reality