Design and Application of General Anti-Avoidance Rules in Latin American Countries

WORLD BANK GROUP

SUNAT

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

CIAT

Design and Application of General Anti-Avoidance Rules in Latin American Countries

Design and Application of General Anti-Avoidance Rules in Latin American Countries

ISBN: 978-9962-750-04-8 (PDF)
ISBN: 978-9962-750-05-5 (ePub)

Cite as follows:
World Bank Group, National Superintendency of Customs and Tax Administration and Inter-American Center of Tax Administrations (2026). *Design and application of General Anti-Avoidance Rules in Latin American countries.* CIAT https://www.ciat.org

Coordinators of the Document

- World Bank Group: Claudia Lucia Vargas Pastor.
- CIAT: Anarella Calderoni and Isaác Gonzalo Arias Esteban.
- SUNAT Peru: Carlos Rojas Chavez, Domingo Neyra Lopez, Jose Antonio Pena Rivera and Palmer Luis De la Cruz Pineda.

General Rapporteur

Pablo Porporatto, International Consultant, Argentina.

Reviewers

- Anarella Calderoni, Inter-American Center of Tax Administrations.
- Claudia Lucia Vargas Pastor, World Bank Group.
- Domingo Neyra López, National Superintendency of Customs and Tax Administration, Peru.
- Isaác Gonzalo Arias Esteban, Inter-American Center of Tax Administrations.
- Isabel Chiri, World Bank Group.
- José Antonio Peña Rivera, National Superintendency of Customs and Tax Administration, Peru.
- Palmer Luis De la Cruz Pineda, National Superintendency of Customs and Tax Administration, Peru.
- Natalia Aristizábal Mora, World Bank Group.
- Tiffany Reyes, Inter-American Center of Tax Administrations.

This document is the result of the coordination of efforts between CIAT, through the CIAT-SECO Cooperation Program, the World Bank Group and SUNAT of Peru, institutions that co-organized the ‘Regional Workshop on general anti-avoidance rule’ in Lima on March 4 and 5, 2025, whose objective was to exchange experiences on the normative design and application of general anti-avoidance rules, both at the domestic and international level.

Experts and Officials of Tax Administrations Who Contributed with Practical Experiences:

- Carlos Rojas Chavez, National Superintendency of Customs and Tax Administration (SUNAT), Peru.
- Helena Alves Borges, Autoridade Tributária e Aduaneira, Portugal (virtual).
- Fernando Becerra O'phelan, National Superintendency of Customs and Tax Administration (SUNAT), Peru.
- Palmer Luis De la Cruz, National Superintendency of Customs and Tax Administration (SUNAT), Peru.
- Ernesto Loayza Camacho, National Superintendency of Customs and Tax Administration (SUNAT), Peru.
- José Ignacio Muñoz, Internal Revenue Service (SII), Chile.
- José Antonio Peña Rivera, National Superintendency of Customs and Tax Administration (SUNAT), Peru.
- Irene Salomó Rojas, Tax Administration Service (SAT), Mexico.

Likewise, the preparation of the document was based on the information provided by the tax administrations of eleven Latin American countries (**Argentina, Brazil, Chile, Colombia, Ecuador, Guatemala, Honduras, Mexico, Panama, Peru, and Uruguay**), as well as other relevant international experiences.

Complexity is inherent in General Anti-Avoidance Rules.

One situation, two different perspectives, as illustrated by these two paradigmatic judicial precedents:

'The whole operation, although executed under the terms of the law, was actually an elaborate and contrived form of transfer, disguised as a corporate reorganization and nothing more.'

Gregory v. Helvering (1935)

'Every man has the right, if he can, to arrange his affairs so that the tax applicable under the laws will be less than it would otherwise be. If he succeeds, however much the Commissioners of Inland Revenue or his fellow citizens may despise his ingenuity, he cannot be forced to pay a higher tax.'.

IRC v. The Duke of Westminster (1936)

Table of Contents

Tables

Schemes

Acronyms and Abbreviations Used

TAs:	Tax Administrations
AFIP:	Federal Administration of Public Revenue of Argentina, replaced in October 2024 by **ARCA** (Agency for Revenue and Customs Control).
BEPS:	(*Base Erosion and Profit Shifting*): OECD/G20 initiative on base erosion and profit shifting, addressing aggressive tax planning.
WB:	World Bank
DTA or DTC:	Double Taxation Agreement/ Double Taxation Convention
CFF:	Federal Tax Code of Mexico (*Código Fiscal de la Federación*).
CIAT:	Inter-American Center of Tax Administrations
CTN:	National Tax Code of Brazil.
DIAN:	Directorate of National Taxes and Customs of Colombia.
GAAR:	General Anti-Avoidance Rule.
AI:	Artificial Intelligence.
MLI:	A multilateral instrument developed by the OECD's BEPS Inclusive Framework to incorporate anti-avoidance clauses into existing treaties.
IPF:	Argentina's previous Tax Planning Information Regime (repealed).
IVA:	Value Added Tax
IUE:	Tax on Profits of Bolivian Companies.
OECD:	Organization for Economic Cooperation and Development.
UN:	United Nations Organization.
PPT:	Principal Purpose Test introduced in the 2017 OECD and UN Model Conventions.
RICOI:	Supplementary Information Regime for International Operations, regime in Argentina that requires taxpayers to report their tax planning schemes*.
SAAR:	Specific Anti-Avoidance Rules(s).
SAT:	Tax Administration Service of Mexico.
SHCP:	Ministry of Finance and Public Credit in Mexico.
SRI:	Internal Revenue Service of Ecuador.
SUNAT:	National Superintendency of Customs and Tax Administration (Peru).
T.U.O.:	Consolidated Text of the Peruvian Tax Code.
TTA/s:	Tax and Customs Court/s in Chile.
EU:	European Union

* **Note:** On October 21, 2025, the Argentine tax authority (**ARCA**) issued General Resolution 5772/2025, which **repealed the RICOI regime**. This measure applies to fiscal years ending after May 1, 2025

1 Introduction

This document was developed based on the conceptual framework of the **'Toolkit for the Design and Effective Implementation of Domestic and International General Anti-Avoidance Rules' (2022)**. Its purpose is to delve deeper into several of its core topics through a practical and contextualized approach, drawing on the regulatory frameworks and management experiences of selected Latin American countries regarding **General Anti-Avoidance Rules (GAARs)**. The objective of this document is to provide a tool with recommendations and useful experiences to achieve the effective and sustainable implementation of a GAAR.The objective of this document is to provide a tool featuring recommendations and practical experiences to achieve the **effective and sustainable implementation** of a GAAR.

The document begins by establishing the foundational principles of its content, presenting tax principles as the justification for anti-avoidance rules and outlining the practical challenges faced by **Tax Administrations (TAs)** in managing them within the context of disruptive technologies. It further explores the various types of anti-avoidance clauses and traces their evolution and arrival in Latin America, providing essential context for the subsequent analysis.

The analysis of the design and application experiences of GAARs in selected Latin American countries form the central section of this document, which is divided into two parts. The first part examines the design and operation of the domestic GAARs, including their legal framework, sources of inspiration, and specific features such as **tax schemes**, tax benefits, and the requirement for **subjective and objective tests**. It also analyzes the consequences of their application, their interaction with **Specific Anti-Avoidance Rules (SAARs)**, and the potential inclusion **of thresholds**. Furthermore, it highlights the implementation process, emphasizing the importance of public consultations, explanatory memoranda, and practical aspects like official staff training, internal procedures, case databases, taxpayer communication, and the role of **advisory or oversight panels**.

The second part of this section addresses the application of domestic GAARs in cases involving Double Taxation Conventions (DTCs). It covers the application and interpretation of GAARs contained directly within DTCs, with special emphasis on the **Principal Purpose Test (PPT)** from the BEPS Action Plan and the dispute resolution procedures arising from their application.

Additionally, cases provided by the TAs are highlighted, involving concrete examples of real-world schemes where GAARs have been applied. These distinguish between cases involving domestic GAARs and those arising from the framework of DTCs.

Subsequently, the complexities and obstacles that countries face when designing and implementing GAARs are identified, including the need for clarity in the definition of key elements, interaction with other anti-avoidance rules, information asymmetry, and litigation management.

Based on the foregoing analysis, this section offers guidelines and practical recommendations for the countries in the region, seeking to optimize the design and application of their GAARs. This includes aspects such as interaction with SAARs, thresholds, and penalties.

a. Tax principles as a justification for anti-avoidance rules

The tax principles of legality, equality and the ability to pay establish limits both for the actions of TAs and for Taxpayers. The latter may not unduly evade a taxable event provided for by law, considering their duty to contribute, in accordance with their ability to pay, by concealing it or avoiding its occurrence through artificial, simulated, or contrived structures.

As stated by the Court of Justice of the European Union (CJEU), '*The application of the tax regulations cannot be extended to abusive practices that, although formally respecting the legislation, pursue an objective contrary to the spirit of the norm*.' (Halifax, C-255/02, CJEU). The court also noted that '*The use of a legal structure for the sole purpose of obtaining a tax advantage without a real economic justification constitutes an abuse of law and should be rejected by the tax authorities*' (Eqiom SAS and Enka SA, C-6/16, CJEU).

On the other hand, it is not possible to attribute new taxable events to taxpayers, beyond what is established by law, nor to undermine the freedom of contract, which grants the freedom opt for the most tax-efficient structure. However, '*The freedom of establishment cannot be used to avoid the tax burden artificially, without a real economic justification*' (Cadbury Schweppes, C-196/04, CJEU).

Nevertheless, it could happen that principles of legality and the ability to pay collide. In this context, the application of a GAAR can correct situations in which a transaction that may be legal in its formal appearance violates the substance of the ability to pay, and, consequently, affects the principle of equality among taxpayers.

These tax principles and their delicate balance and weighting justify the existence and application of these clauses in modern constitutional systems.

Within this delicate balance GAARs, whose purpose is to combat or prevent tax avoidance, become relevant. Their fundamental impact lies in increasing the perception of risk among taxpayers to discourage the aforementioned avoidance practices.

There is no international consensus on the definition of tax avoidance. Unlike tax evasion, where the tax liability arises and is concealed, tax avoidance involves circumventing the generation of that liability in an artificial or simulated manner, through camouflage or manipulation. Likewise, it should be noted that the artificial or abusive nature is what differentiates it from genuine tax planning or tax mitigation. This is easy to state, but difficult to prove in practice.

The UN handbook (2019) indicates that tax evasion is an intentional conduct of non-payment or underpayment of taxes, which requires fraudulent conduct, non-declaration, non-declaration or misrepresentation, often classified as a crime punishable by fines or imprisonment. In contrast, avoidance implies the reduction of taxes, through at least ostensibly legal means.

GAARs can be based on different legal doctrines, such as abuse of law, fraud on the law, simulation, and prevalence of substance over form, among others. According to the comments of Art. 11 of the **CIAT Model Tax Code** (2015), these GAAR clauses seek to prevent acts from being used for purposes other than those intended by law or without any other justification than reducing taxation, obtaining improper tax credits or securing other tax benefits.

Faced with countless possibilities for circumventing tax regulations through the adoption of artificial or forced arrangements, tax systems generally incorporate these rules to grant tax authorities the power to monitor such structures.

However, judicial precedents in some countries allow the taxpayer to invoke the prevalence of economic reality over the form. In Argentina, the Supreme Court of Justice, in some cases, has applied **the principle of economic reality** in favor of the taxpayer (*Lagazzio, Mellor Goodwin* and *Kelloggs*). According to Tarsitano (2021), this fulfills the prediction by Dino Jarach, in that economic reality allows for taxation that uphold the principle of equality, whether or not in favor of the taxpayer or the treasury. Notably, a U.S. court ruling – *Complex Media v. Commissioner* (TC Memo 2021-14)-, also saw a taxpayer's position prevail on the ground that the substance of the transaction was different from its form.

b. Challenges for tax administrations in the context of new technologies

When approaching the task of monitoring the avoidance schemes, we must not overlook the practical challenges faced by TAs to identify, review and, where appropriate, challenge these schemes. These include information asymmetry when auditing large multinational taxpayers, as well as the lack of technical capacity, and the human and material resources required to apply the GAAR objectively and effectively.

It is important to exercise caution when applying these exceptional rules, given that it is equally harmful for a tax authority to fail to challenge an actual avoidance scheme as it is to challenge those that constitute genuine or legitimate tax mitigation.

In the current context, the impact of new technologies, in particular Artificial Intelligence (AI), on international tax planning is noteworthy. AI is ushering in a new era in tax planning, offering taxpayers and their advisors unprecedented tools to design more efficient and optimized strategies, while simultaneously improving the ability of TAs to detect both avoidance and evasion.

For taxpayers and their advisors, this environment offers new tools to design more efficient and optimized tax strategies, to navigate the complexities of the global tax landscape. AI's ability to process and analyze data on a superhuman scale allows for the creation of schemes that maximize tax benefits within the legal framework, by accounting a vast number of factors previously unmanageable.

At the same time, TAs are adopting AI as a fundamental ally to level the playing field. With these tools, TAs can dramatically improve their ability to detect aggressive tax planning, identifying complex patterns and schemes that previously remained hidden.

This dual impact of AI generates a technological race dynamic between tax planners and enforcement agents. As AI becomes more accessible and sophisticated, the complexity of both tax planning and detection methods will inevitably continue to evolve.

AI will not replace expert human judgment, but will enhance it, requiring all actors involved in the tax ecosystem to deeply understand their capabilities and limitations. This is an evolving issue that presents important regulatory and ethical challenges regarding the use of such a powerful tool.

a) Some types of anti-avoidance clauses.

Based on the analysis of various international experiences, it is possible to identify several typologies or classifications of GAAR, based on their design, implementation mechanism, and/or their underlying philosophy. Some of these categories are briefly described below:

- **Domestic vs international treaty-based GAARs**: this classification is fundamental and distinguishes between GAARs that are contained in the domestic legislation of a country and those that are included in the DTCs. The widespread practice of including GAARs in the DTCs is recent.

  Action 6 of the BEPS Action Plan, which constitutes a minimum standard of the BEPS Inclusive Framework, recommends introducing a GAAR in the DTCs to contain abuses of its rules. Action 15 provides a Multilateral Instrument (MLI) for the rapid adoption of these rules across existing treaty

networks. Likewise, the OECD and UN Model Tax Conventions incorporated a GAAR in their 2017 versions, following these BEPS recommendations.

- **Statutory GAARs and judicial or jurisprudential GAARs:** some countries – particularly those with a civil law tradition – have codified the GAARs in their statutes or tax codes. Others – mainly those with a common law (Anglo-Saxon) influence, including the United States – recognize the application of GAARs through judicial doctrines or case law.

- **GAARs based on application criteria:** since the GAARs seek to uncover the 'real nature' of a transaction, their wording varies. They may apply in different pre-established situations, for example when a transaction is considered 'improper' or 'unsuitable' for obtaining a tax advantage, or when it is 'artificial' and/or 'fictitious' and/or 'a sham'. Some countries apply a 'substance over form' approach.

- **Purpose-based GAARs**: this type focuses on the objective of the transaction. Their design may follow a broad approach (if one of the purposes is to obtain a tax advantage), an intermediate approach, which is the one recommended by Action 6 of the OECD BEPS Plan and the EU Anti Avoidance (ATAD) Directive (if one of the main purposes is to obtain a tax advantage) and narrow (if the exclusive or main purpose is to obtain a tax advantage).

- **GAARs by 'sources of inspiration'**: the design of a GAAR can be based on models drafted by international organizations (CIAT, the UN, the OECD, others), tax laws of other countries, or local developments, based on domestic practices of tax avoidance, including national jurisprudence.

These typologies are just a few of the many possible classifications that can be identified as a result of an international GAAR analysis. However, each GAAR is unique, reflecting the country's history, legal culture, the effectiveness of the tax system, judicial interpretation, and even the tax morality of each country, among other issues.

That is why the literal adoption of standards from other jurisdictions may not be effective due to the particularities of each country. However, learning from comparative international experience and international models can provide vital guidance when designing, updating, and applying a GAAR.

Within the context of the DTCs, the incorporation of a GAAR in the **2017 Model Convention** (Art. 29, paragraph 9) represents a novel application of a common standard (the Principal Purpose test, *PPT*) for the countries that adopt it. Nevertheless, it is likely that judicial precedents, the position of the courts, and even the tax morality of each country will give rise to local particularities These differences could lead to disputes that end up being resolved through the framework of the DTCs themselves.

b) The evolution of anti-avoidance clauses and their arrival in Latin America

The GAARs have been a fundamental tool in the evolution of tax law at a global level, to combat or discourage avoidance practices.

They have been in the tax systems for more than a century. Among the oldest countries is Germany, which in 1919 incorporated provisions that allowed tax authorities to ignore artificial schemes that sought to avoid paying taxes. Subsequently, France in 1941, Spain in 1963 and Italy in 1990 developed their own versions of GAAR within their regulatory systems, strengthening the concept of 'substance over form' as a guiding principle in tax matters.

Although in Anglo-Saxon or Anglo-Saxon-influenced countries the anti-avoidance doctrines evolved predominantly from jurisprudence-with emblematic cases such as 'Gregory v. Helvering' (1935) in the United States, where it was pointed out that the TA is not obliged to accept the form chosen by the taxpayer if he determines that the form used does not reflect the underlying reality of the business—other legal systems of countries such as those mentioned above codified statutory rules to address the problem of abusive tax planning. Cases such as Australia and Canada show that adverse judicial precedents led to the implementation of statutory GAARs.

Anguita Oyarzún (2017), states that '...*whether it is called fraud on the law in Spain, abuse of legal forms in Germany, abuse of law in France, theory of new realism in the United Kingdom, doctrine of substance over form in the United States or economic interpretation criterion in South America, all these theories, doctrines and rules share a common goal: ensuring that reality prevail over appearances or deception and, ultimately, upholding the principles of legality and equality in tax matters*'.

According to this author, the anti-avoidances clauses of the South American countries have their genesis primarily in the German and Spanish systems, as well as to long-standing Anglo-Saxon (common law) jurisprudential developments. Argentina serves as a concrete example of a pioneer country in implementing a GAAR in the region, having adopted the German model as its precedent.

However, regarding international transactions, a radical shift has taken place with respect to the application of the DTCs, starting with the **BEPS Action Plan** championed by the G20 and the OECD since 2013. This plan has fostered a global 'anti-avoidance policy', leading to the incorporation or strengthening of anti-avoidance measures within the treaties themselves.

This global convergence towards the adoption of GAARs underscores the recognition of the need to provide TAs with effective tools to combat aggressive international tax planning practices that seek to erode tax bases and artificially shift profits (BEPS).

In Latin America, the landscape has evolved significantly. Historically, GAARs were infrequent in the region, with pioneering exceptions such as Argentina (1946), Uruguay (1974), and Ecuador (1975), which established criteria of the primacy of economic reality over legal form. In the 21st century there has been a marked trend towards incorporating or strengthening GAARs. Notable examples of this include Brazil (2001), Bolivia (2003), Peru (2012 following a 1996 regulation that was approved and then repealed), Colombia (2012), Chile (2014, with significant adjustments in 2024), Honduras (2016), Costa Rica (2018), Panama (2019, effective June 1, 2024), and Mexico (2020).

In the following sections, based on information provided by TAs to the CIAT Executive Secretariat and collected by the authors, these experiences are analyzed to identify challenges, lessons learned and best practices, keeping the key aspects addressed in the aforementioned CIAT GAAR Toolkit.

2 Analysis of the design and application experiences of GAARs in Latin American countries

This work was based on the information provided by a group of TAs from the Latin American region (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guatemala, Honduras, Mexico, Panama, Peru, and Uruguay), from a template managed by the CIAT Executive Secretariat, with support from the World Bank and SUNAT of Peru.

Additionally, the information provided by representatives of these countries was considered during the execution of the 'Workshop on Regulation and Application of General Anti-Avoidance Rules (GAAR),' organized by SUNAT, the World Bank and CIAT in Lima, Peru, on March 4 and 5, 2025.

First, we will address GAARs included in domestic legislation—or 'national legislation', as it is called in some countries, particularly in terms of their design, adoption, or incorporation, and practical application. Secondly, we consider DTCs, with respect to the possibility of applying domestic GAARs in order to ignore benefits derived from such DTC treaties. Finally, we examine the GAARs included directly in these international instruments, a widespread global practice based on the common standard stemming from **BEPS Action 6, the PPT rule** (art. 29, paragraph 9 of the Model Convention).

A) Domestic GAARs.

2.1 Design and operation of GAARs in domestic legal systems.

Given the diversity of approaches mentioned above and considering the growing adoption of GAARs by countries, it is useful to first review various proposed designs for implementing these powers. Various international organizations and authors have proposed different structures for these clauses.

The previously mentioned **CIAT Model Tax Code** contemplates in its article 10 the 'characterization of facts and simulation', establishing that the characterization of facts with tax relevance will be conducted with the same criteria, formal or material, used by the law to define them. In addition, it says that in the cases of sham transactions or simulated acts or businesses, the taxes will be applied according to the acts or businesses actually conducted.

Likewise, the CIAT Model Code includes a 'general anti-avoidance clause' in Article 11, which provides that when acts are performed that, individually or jointly, are **artificial or inappropriate** for obtaining the result achieved, the applicable tax consequences will be those corresponding to the customary or

appropriate acts for achieving that result. However, this provision applies only when the artificial or improper acts produce no relevant economic or legal effects other than tax savings.

For their part, Waerzeggers and Hillier (IMF, 2016) propose an interesting and simplified model. They stress that the final form of any GAAR should consider the legal tradition and the specific legal system of each country, including constitutional limitations, as well as tax policy and administration issues. Their model is activated when the tax authority is convinced that a scheme has been initiated, a tax benefit has been obtained in relation to the scheme, and the sole or dominant purpose was to obtain that tax benefit. In such cases, the Tax Authority may determine the tax liability as if the scheme had not been conducted or as if a **reasonable alternative** had been pursued.

Furthermore, the UN, in its Practical Handbook (2019) on GAARs to protect the tax base of developing countries, warns about several key aspects:

- A GAAR should be broad enough to cover various forms of tax avoidance.
- It must clearly distinguish legitimate business transactions from abusive ones.
- The purpose test must be objective.
- Regarding the relationship with other rules, including SAARs, avoid wording that explicitly establishes their prevalence. Instead, use a case-by-case analysis, where the concrete circumstances will determine whether a GAAR complements or is superseded by a SAAR.
- It should be simple in its formulation.
- The tax consequences should be clearly defined.
- Taxpayers should have the right to appeal.
- There must be a clear relationship with tax treaties.

The UN also contemplates a simplified model of GAAR triggered when one of the main purposes of a transaction is to obtain a tax benefit and, considering all of the circumstances, such a benefit would be contrary to the object and purpose of the tax law. In such cases, the tax authorities would deny the tax benefit.

a) Legal framework and its source of inspiration.

Chapter 5 of the aforementioned CIAT GAAR Toolkit points out that the specific wording of these clauses varies between countries and that there is no consensus on an 'ideal' design, nor is there any empirical evidence in this regard. It recommends considering three main sources of inspiration: model clauses

from international organizations, GAARs from other jurisdictions, and locally developed concepts related to tax avoidance.

The toolkit highlights the importance of connecting these rules with local practice, including previous judicial precedents and known avoidance schemes that cannot be addressed by current existing Specific Anti-Avoidance Rules (SAARs). Based on the information collected regarding the countries that have a GAAR in force in 2024/2025, **Table I** in the Annex summarizes the statutory frameworks, years of adoption, and sources of inspiration.

The oldest GAAR in the Region is that of Argentina (1946), followed by Uruguay (1974) and Ecuador (1975), which focused primarily on the primacy of economic reality. In the 21st century, GAARs have evolved towards more sophisticated standards, capable of addressing complex and specific cases involving avoidance, abuse, and simulation or sham transactions, also incorporating administrative procedures such as oversight committees or panels and the application of specific penalties. Among the most recent ones to enter into effect are those of Colombia (2013), Peru (2019), Mexico (2020), and Panama (2024), reflecting the regional trend toward strengthening enforcement against complex tax structures.

In several Latin American countries, formal adoption of GAARs did not coincide with their effective implementation, generating significant delays. In Peru, the Standard XVI was promulgated in 2012 but remained suspended until 2019, pending necessary regulations and parameters. In Colombia, Law 1607 of 2012 established the GAAR, but its practical deployment was consolidated only from 2013 with the creation of the **Tax Abuse Committee** and the definition of internal criteria. Similarly, in Panama, although the GAAR was included in 2019 within the Tax Procedure Code, its effective entry into force occurred only on June 1, 2024, due to the postponement of Code's validity. These cases demonstrate that the need for supplementary regulation, administrative guidelines and institutional restructuring often delay the implementation of GAARs.

As for the source of inspiration, foreign legislation and international models predominate:

- **Argentina:** Its GAAR was inspired from German legislation (Tarsitano, 2021).
- **Chile:** by incorporating GAAR into the Tax Code, the Chilean legislator adopted the best practices of long tradition and application from established OECD members, such as Germany, Australia, Spain, France and the United Kingdom, which sought to grant the Tax Administration new powers to requalify, therefore granting the TAs new powers to recharacterize taxpayer operations for tax purposes.
- **Mexico:** the adoption of the GAAR in 2020 resulted from an exhaustive analysis of comparative law and the influence of the OECD BEPS Action Plan with its PPT clauses.

It is worth highlighting a recent development in Chile, where the GAAR has been in force since 2014. Through Law No. 21,713, promulgated in October 2024 and in force since November 1, 2024 (amended by Law No. 21,716), substantial modifications were introduced in the design and implementation[1].

b) Particularities of current GAARs: tax schemes, tax benefits, subjective and objective tests, application consequences, interaction with SAARs and potential thresholds.

Table II found in the annex at the end of this work exposes specific particularities of the GAARs currently in force in the consulted countries.

Before we mention these particularities, it is important to reiterate that the purpose of a GAAR is to curb avoidance practices. As mentioned previously, there is no international consensus on the scope of such practices. In this regard, some of the Latin American countries analyzed have expressly defined what should be understood as avoidance, abuse, and/or simulation in their respective regulations, for example:

- **Chile:** under Article 4° bis of the Tax Code' 'Tax avoidance occurs when the taxable events established in the tax legal provisions are evaded through legal acts or businesses or a set thereof, involving abuse or simulation.'

Article 4° of the Tax Code defines **abuse,** stating that '*tax abuse is understood to occur when the occurrence of the taxable event is avoided, or the taxable base or the tax liability is reduced, the accrual of said liability is postponed or deferred, refunds are obtained, or a tax benefit or special tax regime is accessed, through legal acts or businesses that, individually or as a whole, do not produce relevant legal or economic results or effects for the taxpayer or a third party, other than the purely tax -related effects referred to in this paragraph.*'

The rule continues by saying that, '*The reasonable choice of behaviors and alternatives contemplated in the tax legislation is legitimate. Consequently, abuse is not constituted by the sole circumstance that the same economic or legal result could be obtained through other legal acts resulting in a higher tax burden; nor that the chosen legal act—or set of acts—generates no tax effect, or generates a reduced, deferred, or lower tax amount, provided that these effects are a consequence of the tax law.'* The analysis of abuse is based on an objective criterion, excluding the taxpayer's intentions or purposes.

Article 4th quarter of the Tax Code establishes **simulation** for tax purposes stating that '*It will be understood that simulation for tax purposes exists when the legal acts or businesses or a series of them conceal the configuration of the taxable event, the nature of the constituent elements of the tax liability, or*

[1] For more details, you can consult the SII Circular No. 31 of April 17, 2025 at the following link: https://www.yeah. cl/normativa_ legislation/circulares/2025/circu31.pdf

its true amount or date of accrual, or when legal acts or businesses are simulated to access a tax benefit or a special tax regime.'

SII Circular No. 31 (April 17, 2025) states that '*the legislator maintains the abuse of legal forms and simulation as the means by which taxable facts are evaded*.'

- **Colombia:** Article 869 of the Tax Statute defines abuse as follows: '*An operation or series of operations will constitute tax abuse when it involves the use or implementation of one or more artificial legal acts or businesses, lacking economic and/or commercial purpose, in order to obtain a tax benefit, regardless of any additional subjective intention*.'
- **Peru:** Standard XVI describes the avoidance cases as follows 'In cases where the avoidance of tax rules are detected, the National Superintendency of Customs and Tax Administration – SUNAT is empowered to demand the tax debt, reduce the amount of balances or favor credits, tax losses, tax credits or eliminate the tax advantage, without prejudice to the restitution of the amounts unduly refunded.'

When the effect of the taxable event is totally or partially avoided or the taxable base or the tax base or tax liability is reduced, or tax credits, carryforwards, or refunds are obtained—through acts that, individually or jointly, are artificial or inappropriate for the result achieved, and where their use results in legal or economic effects (other than tax savings) that are identical or similar to those that would have been obtained through **customary or proper** acts:

> '*SUNAT shall apply the rule that would have corresponded to the usual or proper acts, executing the indicated in the second paragraph, as the case may be*.'

The same Rule XVI, in relation to the qualification of simulated acts, establishes that: '*that, in order to determine the true nature of the taxable event, SUNAT will consider the acts, situations and economic relations that are actually conducted, pursued, or established by the tax debtors. In addition, in case of simulated acts qualified by the SUNAT as provided in the first paragraph, the corresponding tax rule will be applied considering the acts actually performed*.'

Below is a brief analysis of these specific features across the analyzed GAARs:

Reference to a similar scheme, act, agreement, or term:

In general, current GAARs refer to acts and businesses—including 'legal' forms—situations, economic relationships, operations, and agreements that are **artificial**, **atypical**, **simulated**, **apparent**, **improper**, or **lacking in good faith** or economic purpose.

For example:

- **Argentina:** its GAAR (Article 2° of Law N° 11.683), known as the 'Principle of Economic Reality', refers to '*acts, situations and economic relations*' that the taxpayers actually conduct, pursue or establish. It allows the authority to disregard '*legal forms or structures*' that are not manifestly those provided by private law to adequately reflect the taxpayer's true economic intent.
- **Bolivia:** its anti-avoidance rule (Article 8 of Law No. 2492) refers to '*legal forms*' manifestly inappropriate or atypical to the economic reality of the '*taxed facts, acts or underlying economic relations*'. It also refers to 'acts or businesses' in which 'simulation' occurs.
- **Brazil:** its GAAR (Article 116, Single Paragraph of the National Tax Code) empowers the authority to dispense with the '*legal acts or business'* made with the purpose of concealing the realization of the taxable event or the nature of its constituent elements.
- **Chile:** its GAAR (Articles 4 bis, ter and quarter of the Tax Code) refers to '*legal facts, acts, or business conducted*.' Specifically, the GAAR mentions '*legal acts or business or a set or series of them*,' and acts or businesses involving simulation.
- **Colombia** (Articles 869, 869-1 and 869-2 of the Tax Statute): reference is made to '*operation or series of operations'* that constitute tax abuse. They mention '*artificial legal acts or businesses*.'
- **Ecuador:** the Tax Code (Article 17 of the Tax Code) qualifies the '*legal acts*' according to their true essence and, when the generating fact is delimited by economic concepts, it considers the existing '*economic situations or relationships'*.
- **Honduras:** the regulation (Article 105 of Decree 170) establishes that the taxable base must be based on **economic reality**, on the normal and ordinary business practices and accounting standards.
- **Mexico:** its GAAR (Article 5-A of the Fiscal Code of the Federation) mentions '*legal acts*', and specifically, '*legal acts lacking a business reason*' or '*a series of legal acts*'.
- **Panama:** its GAAR (Article 20 of the Tax Procedure Code) addresses the legal effects of the '*acts or businesses'* conducted in order to avoid tax obligations, when there is no valid economic reason to justify them.
- **Peru:** its GAAR (Rule XVI of the Preliminary Title of the Tax Code) quotes '*acts*', and specifically '*acts, situations and economic relations*' let them be '*artificial or improper for the achievement of the obtained result*' and '*that their use results in legal or economic effects, other than tax savings or advantages, that are similar to those that would have been obtained with the usual or proper acts*'.
- **Uruguay:** its GAAR (Article 6° of the Tax Code) refers to '*situations and acts that have occurred*'.

Allusion to tax benefit or advantage:
In several analyzed countries, a reference to a 'tax benefit' is a central element in the definition of abuse or avoidance. This is the case in **Chile, Colombia, Mexico, Panama, and Peru**. Other countries refer to the tax issue in terms of concealing taxable events; altering, distorting, or modifying tax effects; reducing tax payments, etc.

For example:

- **Chile:** Its GAAR refers to obtaining or accessing a '*tax benefit'* or special regime to delimit the behaviors of abuse and simulation in Articles 4°-ter and 4°-quater.
- **Colombia:** its rule refers to '***tax benefit***' understood as *'the alteration, distortion, or modification of the tax effects that would otherwise be incurred by one or more taxpayers or* ***beneficial owners****, such as the elimination, reduction, or deferral of tax, the increase in credit balances or tax losses, and the extension of tax benefits or exemptions.*'
- **Mexico:** it refers to a '*direct or indirect tax benefit*.' Any reduction, elimination, or temporary deferral of a tax liability is considered a tax benefit. This includes those achieved through deductions, exemptions, non-recognition of gain, adjustments to the tax base, the crediting of taxes, the **recharacterization** of a payment or activity, or a change in tax regime, among others.
- **Panama:** according to the anti-avoidance rule, the adoption of legal forms may be disregarded when acts are premeditated for the sole purpose of avoiding the payment of taxes or obtaining '*any kind of tax advantage*,' as long as they willfully violate the duty to contribute.
- **Peru:** it refers to '*tax savings or advantages*', understood as the total or partial reduction of the tax debt, the reduction or elimination of the taxable base, postponing or deferring the tax liability or tax debt, and the obtaining of credit balances, refunds, offsets, compensations, tax losses, This also includes **non-taxable** or exempt status and the subjection to special tax regimes.

Conversely, some countries refer to the tax component in other ways. In the case of the Brazilian standard, reference is made to the purpose of concealing the occurrence of the taxable event or the nature of the constituent elements of the tax obligation.

Argentina, Bolivia, Honduras, and Uruguay do not present an explicit mention of the 'tax benefit' or similar terminology, in their GAAR standard. It should be clarified that, although their domestic GAARs do not use a reference to the tax component, it is clear that their purpose is limited to this field.

Subjective and objective test requirements:
Subjective and objective tests are fundamental elements that are included in a GAAR to analyze the taxpayer's behavior and the potential tax consequences.

According to the CIAT GAAR Toolkit, the purpose of the subjective test is to investigate the conduct and motivations of the taxpayer when entering into a scheme; seeking to determine whether obtaining a tax benefit was the primary purpose or one of the main purposes of the transaction. It focuses on the **manifestation of intent**, observing behavior and the commercial reasons surrounding the operation to find factual evidence of such intent.

The Toolkit notes that objective criteria, such as a **reasonableness test**, can be established to reduce subjectivity. In line with that document, it is important to have objective criteria that can be used to interpret the taxpayer's purpose.

Some examples cited in the Toolkit are:

- **Canada**: The GAAR uses the 'primary purpose' test to assess whether the transaction was conducted 'primarily for bona fide purposes other than obtaining the tax benefit.'
- **South Africa**: The GAAR presumes that an avoidance agreement was made for the sole or primary purpose of obtaining a tax benefit, unless the taxpayer proves otherwise, considering the reasonableness in light of the relevant facts and circumstances. It also applies additional tests such as abnormality of actions or lack of commercial substance.

Conversely, the **objective test** acts as a secondary confirmation. It seeks to determine whether, although the transaction has had a main tax purpose, obtaining that tax benefit is in accordance with the object and purpose of the relevant legal provision. This test is usually applied after the subjective test and requires the taxpayer to provide evidence demonstrating that the tax benefit is aligned with the legislative intent of the tax rule. Objectivity here lies in the clear consideration of the motivations that underpin tax legislation. It focuses on the economic substance of the transaction and its alignment with the '**spirit of the law**'. Therefore, it acquires a residual character in the analysis process.

Some examples mentioned from the toolkit include:

- **Italy:** The GAAR requires that the tax authority, before issuing a settlement based on GAAR, formally notify the taxpayer detailing the reasons for the abuse of right and requesting clarifications. The taxpayer can then demonstrate the existence of non-tax reasons that support the operation.
- **Reasonableness Test:** When associated with a reasonableness test, it implies that the taxpayer's information must be organized logically to demonstrate the connection between the purpose of the arrangement and the steps taken.

In summary, the subjective test – conducted by the administration – focuses on the '**why**' of the taxpayer's action, while, in a later step, the **objective test** – by the taxpayer – focuses on the **'whether**' that benefit is legitimate under the law, analyzing if its main intention respect the spirit and purpose of the rule.

Regarding the **subjective test**, as reported by the tax authorities:

- **Argentina:** the GAAR, known as the 'Principle of Economic Reality,' includes a subjective test by allowing tax authorities to disregard legal forms if they do not correspond to the 'true economic and effective intent' of the taxpayers.
- **Brazil:** its GAAR empowers the authority to disregard legal acts or business conducted with the '*purpose of concealing the occurrence of the taxable event or the nature of the constituent elements of the tax obligation*.'
- **Colombia:** when referring to the implementation of legal acts or business '*in order to obtain tax benefit, regardless of any additional subjective intention, it is directly mentioned*.' The standard also alludes to the fact that the content of the act 'hides the true will of the parties.'
- **Ecuador:** recognize a subjective test by referring to economic relationships actually established by the interested parties.
- **Mexico:** The GAAR admits a subjective test by stating that transactions '*will have the tax effects that correspond to those that would have been made to obtain the economic benefit reasonably expected*.'

  On the other hand, it is noted that authorities may presume, unless proven otherwise, that a **business purpose** is lacking when the **reasonably expected quantifiable economic benefit** is less than the tax benefit, or when such economic benefit could have been achieved through fewer legal acts with a more burdensome tax result. The law itself provides a definition of reasonably expected profit by referring to operations that seek to generate income, reduce costs, increase the value of the goods they own, or improve market positioning, among others.

  It also provides guidelines for quantifying said benefit based on **contemporaneous information** related to the operation under analysis, including the projected economic gains.

  A review of the standards shows that the following countries also include some subjective test:

- **Bolivia:** its anti-avoidance rule allows the administration to disregard legal acts or business conducted with the '*purpose of concealing the realization of the taxable event*' or its constituent elements.
- **Panama:** Its GAAR empowers the authority to ignore the legal forms when premeditated acts are '*designed for the sole purpose of avoiding the payment of taxes or obtain some kind of tax advantage are conducted, willfully violating the duty to contribute*.'

Regarding Peru, it should be noted that the GAAR regulations (Art. 8) expressly clarify that the application of said clause is not the result of investigating or discovering the **intentions or motivations** of the taxpayers or third parties.

Something similar is happening in **Chile**, where recently the 2024 reform (Law 21.713.) clarified the objective nature of the GAAR (Circular No. 31 of April 17, 2025). Article 4°ter establishes an objective criterion rather than an analysis of the taxpayer's intent. in this case, the examination consists in determining whether the nature of the legal acts or businesses, individually or as a whole, used by taxpayers can be explained for reasons other than pure tax reasons. In certain cases, the different acts, in principle, isolated and independent of each other, may be considered as a whole in order to assess the general consequences of the transaction or operation that is ultimately being conducted.

With regard to the existence of **objective test** the tax authorities of Argentina, Bolivia, Brazil, Colombia, Honduras, Panama, and Uruguay understand that their GAARs standards do not expressly include objective testing, in the sense given to this type of test in the CIAT GAAR Toolkit.

In the case of Peru, the authorities recognize that its GAAR does not have an explicit objective test in this regard, however, its regulations indicate that in order to analyze the situations provided for in its GAAR, the substance of the act(s), situations or economic relations must be taken into consideration within the evaluation and analysis, among others. In addition, they state that the Review Committee cites the audited person to explain their reasons regarding the observation made. On the same basis, it is understood that the existence of such evidence was recognized by the authorities of Chile – although in this case, without subjective proof – Ecuador and Mexico.

Considering the above, it should be noted that in general, in the analyzed GAARS, it is not observed in the consulted countries that the objective test works in the sense indicated by this Set of Tools, that is, seeking to determine whether, although the transaction has had a specific purpose, a main tax goal, the obtaining of that fiscal benefit is in accordance with the object and purpose of the legal provision that grants it. In the Toolkit's sense, this test usually follows the subjective test and requires the taxpayer to demonstrate that the benefit aligns with legislative intent, similar to the PPT (Principal Purpose Test) introduced in tax treaties under BEPS Action 6.

However, and although it is not expressly included, it is understood that when the existence of a possible abuse is analyzed in a case, it will be implicitly reviewed whether the obtaining of tax benefit is in accordance with the applied norm, because this should be part of the analysis.

Finally, in all countries, taxpayers, facing a challenge from the tax authorities under powers granted by GAARs, have the right to respond and provide arguments and evidence that show that it is not a case of avoidance such as **abuse of forms, or simulations**.

Consequences of GAAR application

The application of a GAAR seeks to move beyond mere legal formality. Its purpose is not simply to label an operation as 'abusive,' but, fundamentally, to identify and apply the tax treatment that would have

applied if an artificial structure had not been used. This implies that the tax authority is empowered to adjust the taxpayer's tax position to reflect the **true economic reality** of the facts.

The main consequences arising from the application of a GAAR include:

- **Disregarding** the forms or legal structures that are manifestly inadequate or atypical to the economic reality of the facts, thereby prioritizing **substance over form**.
- Determine the tax consequences by applying the rules as if the customary or proper acts leading to the desired economic result had been performed.
- The tax authority may demand the payment of the difference between the undue tax benefit obtained and the actual tax due following **recharacterization.**
- In some jurisdictions, the rule might even allow the authority to **pierce the corporate veil** to impute a company's obligations to its shareholders, provided this is constitutionally permitted.

Country examples:

- **Argentina:** the GAAR, known as the '**Principle of Economic Reality**', allows to ignore inappropriate legal forms and apply the tax law according to the true nature of the taxable event and the real economic situation.
- **Bolivia:** the law allows the administration to interpret the norm in a manner that best suits the economic reality, disregarding manifestly inappropriate or atypical legal forms, and treating the sham transactions as irrelevant for tax purposes.
- **Chile:** the Chilean legislature granted the SII the power to reclassify operations for tax purposes, addressing situations of avoidance, abuse of legal forms and simulation, in order to protect revenue and ensure that legal acts are assessed according to their real economic effects and not only their legal appearance.
- **Colombia:** the Tax Administration has the power **to recharacterize** or reconfigure any operation that constitutes abuse, disregarding its effects and proposing the settlement of the corresponding taxes, interests, and penalties. In addition, Article 869-2 of the Tax Statute grants the power to **pierce the corporate veil** of entities used in abusive conduct.
- **Honduras:** Article 23, paragraph 2 of the Tax Code provides that in the case of sham acts or businesses, the tax must be applied according to the acts actually conducted.
- **Mexico:** legal acts that lack a business reason and generate a tax benefit will have the tax effects that corresponding to those performed to obtain the **reasonably expected economic benefit**.

- **Peru:** SUNAT is empowered to demand the tax debt or eliminate the tax advantage, by applying the rule that would have corresponded to the **customary or proper acts** for the result achieved.
- **Uruguay:** the GAAR allows the interpreter to attribute a meaning to the situations and acts that reflect the actual facts, resulting in the **recharacterization** of the operation for tax purposes.

In addition to the **recharacterization** and the collection of the tax difference, the application of a GAAR may result in the imposition of additional penalties. These penalties are designed to increase the deterrent effect of the rule. Some key considerations about sanctions include:

- The **magnitude of the penalties** can vary, often in inverse proportion to the breadth of the GAAR and in direct proportion to its clarity. A broader GAAR may justify smaller penalties, while a more precise and narrower one could allow for higher penalties.
- **Special vs. General Sanctions**: Not all countries apply specific sanctions exclusively for GAAR-based avoidance. Some choose to apply the general penalties for tax omission already established in their legislation.

Country examples:

- **Argentina:** there are no specific penalties for avoidance under the GAAR, the TA applies the general penalties for tax omission.
- **Chile:** sanctions are established for **third parties** who participate in the planning or design of acts, businesses or contracts classified as abusive or simulated. Fines will be imposed with a cap at 100 UTA (Annual Tax Units). If it is proven that the agreed fees were higher than 100 UTA, the fines will be extended to a cap of 250 UTA.

If the taxpayer fails to identify the third party involved in the audit process, the fine applies to the taxpayer. Additionally, the directors or administrators of the advisor or the taxpayer may be **jointly and severally liable** if they violated their management and supervisory duties.

- **Colombia:** by recharacterizing an operation, the tax administration can propose and settle the respective taxes, interests, and penalties.
- **Mexico:** the circular accompanying the Mexican GAAR (Article 5-A of the CFF) expressly states that the tax effects generated by its application will in no case cause **criminal consequences**. The regulations do not provide for a specific sanctioning regime for the GAAR.
- **Peru:** there are specific violations according to art. 178 of the Tax Code.

In summary, the design of a GAAR should be explicit regarding its consequences (recharacterization and penalties) to grant the tax authority the necessary enforcement powers and, at the same time, provide **clarity and legal certainty** to taxpayers.

Interrelation between the GAAR and the specific anti-avoidance rule (SAARs)

The relationship between GAARs and SAARs is a critical aspect of tax practice. SAARs, as the name implies, are designed to target specific forms of tax abuse, such as **transfer pricing** manipulation, **thin capitalization**, or the misuse of tax treaties. They provide certainty and, in general terms, if they are well designed, they are simpler to understand and apply, both for the tax administration and for taxpayers. However, a drawback of SAARs is that because they are formulated for certain **fact patterns**, they tend to be bypassed by creative taxpayers, frustrating their purpose. In addition, the time it takes to detect an avoidance scheme and to draft new specific legislation can result in potentially significant amounts of revenue loss.

This is where the GAAR comes in, as a **provision of last resort**. Its ultimate goal is to curb unacceptable tax avoidance practices that would otherwise comply with the terms and legal interpretation of ordinary tax law. Unlike SAARs, a GAAR can act **preemptively** and deter taxpayers from developing new avoidance plans. It can also solve situations where SAARs are bypassed because their criteria are met only formally, but not substantially.

States generally take two main positions regarding the interaction between GAARs and SAARs:

1. The Principle of '*Lex Specialis Derogat Legi Generali*': in this approach, SAARs prevail over GAARs. GAARs are used as a provision of last resort when there is no SAAR applicable to the specific situation. This gives taxpayers more legal certainty by knowing that a SAAR will be enforced first.
2. **Complementary tools**: under this perspective, GAARs and SAARs are considered complementary, without a mandatory priority order in practice. The TAs may choose to apply the standard deemed most appropriate to address the abusive practice identified. This approach recognizes that the GAARs can overcome the defects of the SAARs and allows an extended analysis of complex schemes not explicitly covered by specific rules.

From the information collected, the following **country experiences** emerge:

- **Chile**: Legislation clearly adopts the principle of '***lex specialis',*** although qualified with a complementarity approach. Article 4° bis paragraph 4 of the Tax Code establishes that, if a special rule to prevent avoidance is applicable, its legal consequences will prevail over those of the GAAR. However, after the reform of Law No. 21,713 (2024), it is established that the GAAR and the SAARs interact in a hierarchical but also complementary way: when a single act is covered by a SAAR, only this rule applies, but in complex operations where SAAR only regulate some components, the GAAR can be applied to the entire operation.

- **Colombia**: Although no explicit rule defines this interaction, in Colombia the specific rule (SAAR) prevails in case of conflict with the GAAR. The Colombian GAAR, Articles 869, 869-1 and 869-2 of the Tax Statute, allows the Tax Administration to reclassify abusive operations and, in certain cases, pierce the corporate veil of entities used for elusive purposes.
- **Peru**: unlike Chile and Colombia, Peru lacks a provision that regulates the interaction or priority between its GAAR (Standard XVI of the Preliminary Title of the Tax Code) and the SAARs. Standard XVI empowers SUNAT to demand the tax debt or eliminate tax advantage in cases where the acts are artificial or inappropriate for the obtained result achieved.

In summary, defining the interaction between GAARs and SAARs is a fundamental element for an effective design. This clarity improves the **legal certainty** of taxpayers and allows TAs to apply their powers combating tax avoidance in a more coherent and predictable way.

Application of monetary thresholds for GAARs

Most countries do not have monetary thresholds for the application of their GAARs. However In Chile, the declaration of the existence of avoidance to require the declaration of avoidance with the changes introduced in 2024 by Law No. 21,713, and clarified by Circular No. 31, the new limit for the **General Department of Anti-Avoidance Standards** report to the Executive Committee on the existence of avoidance and, consequently, and file an injunction as follows:

- There must be a reduction of the taxable base equal to or greater than 1,000 UTM.
- Alternatively, the avoidance can be established if a tax benefit has been received or a special tax regime has been entered into.
- In the specific case **of abuse of legal forms**, obtaining tax refunds through such abuse is also considered.

Mexico also indicates that it uses internal monetary thresholds when the amount of the tax benefit obtained directly or indirectly by a taxpayer or by a group of taxpayers, results from legal acts allegedly lacking a **business purpose**, or in smaller cases deemed significant due to their importance and transcendence.

2.2 Introduction of GAARs

Chapter 4 of the **GAAR Toolkit** addresses the management of introducing a GAAR. Regarding internal GAAR, it is recommended to organize a public consultation process before formalization or important modifications, to increase the legitimacy and gather data about the impact of different designs. This process should involve key stakeholders, such as the public, the private sector, NGOs and academics, discussing not only whether to introduce or modify a rule, but how to draft it or modify it.

It is also advisable to draft an explanatory memorandum accompanying the legislative proposal, explaining key features and the rationale behind the wording. This can facilitate the legislative process and subsequent judicial interpretation. This memorandum should include the reasons for introduction, risk assessment results, a consultation summary and international or local sources of inspirations.

A crucial aspect of management involves timing considerations, coordinating when the GAAR will be applicable to returns, tax benefits received and schemes. Generally, it is suggested that the rule apply to profits generated after its **entry into force**, regardless of when the scheme was created. **Retroactive application** to benefits obtained before entry into force is generally not advisable, though potentially possible within legal limits if properly justified.

It is important to distinguish this from the application of existing **judicial anti-avoidance principles** to prior years, independent of a newly codified GAAR. An interesting example is the **Mexican experience**, where the **Federal Administrative Tax Court** issued a 2024 decision (Precedent No. IX-CASR9ME-3) regarding the application of Mexico's GAAR (Article 5-A of the Federal Tax Code), introduced in 2020. The primary conclusion was that Article 5-A cannot be applied retroactively:

'*Article 5-A of the Tax Code cannot be applied to legal acts concluded and that generated direct or indirect tax benefits before the date of entry into force of the provision (January 1, 2020), since this would imply recharacterizing said acts and imposing an effect based on requirements that did not exist at the time of their occurrence.*'

However, the Court also concluded that while the GAAR was not applicable, the SAT may nevertheless validly invoke the lack of economic substance or commercial purpose as a ground for rejecting an operation conducted before 2020. This implies that a supplementary tax return must be submitted to pay the taxes in accordance with the SAT's determination.

The judgment refers to case law number VIII-J-1As-99 issued by the Superior Chamber, which provides that the SAT may treat a lack of 'commercial purpose', often used interchangeably with 'economic substance'—as a basis for treating an operation as **non-existent**.

In such cases, the burden of proof falls on the taxpayer to prove the existence and validity of the transaction. In this regard, the Court concluded that the SAT acted within its powers by discarding transactions that, in its opinion, lacked economic substance, even if the transactions in question occurred before 2020. The taxpayer had the opportunity to provide evidence supporting the business purpose of the contested transactions, and failed to do so, according to the SAT and the Court's confirmation.

a) Prior consultation process. Explanatory memorandum for implementation.

Organizing a public consultation process is highly advisable before the formal introduction or major modifications to a GAAR. This process has several key purposes:

- To increase the perceived legitimacy of the GAAR.
- To generate critical data regarding the potential impact of different GAAR designs on national tax revenue and commercial practices.
- To raise awareness within the tax community that certain types of tax planning schemes might be deemed unacceptable, which could lead to the dismantling of some abusive structures even before the rule take effect.

Public consultation can take place at three distinct stages: when deciding whether to introduce a GAAR, when deciding how to draft it, or when deciding how to modify an existing GAAR. It is crucial to give sufficient publicity and allow the participation of various stakeholders, including the public, the private sector, non-governmental organizations (NGOs), and academia. While significant private sector involvement may raise concerns about 'business-friendly' bias, the benefit of obtaining high-quality information generally outweighs potential issues of mistrust. Some countries have successfully 'outsourced' this process to independent committees.

In addition to the consultation process, the drafting of an explanatory memorandum accompanying the draft GAAR legislation is recommended. This memorandum facilitates the legislative process and provides an essential framework for **judicial interpretation**. It should include:

- The rationale for introducing a GAAR.
- The findings of the tax avoidance assessment process, if applicable.
- A summary of the consultation process outcome.
- The international practices or doctrines (e.g., *fraude à la loi*, substance-over-form) that served as inspiration for the formulation of the GAAR.

Latin American country Experiences:

- **Chile**
  - Chile organized a public consultation process to gather stakeholder feedback.
  - Various documents and circulars (such as Circular No. 65 of 2015, Circular No. 41 of 2016, Circular No. 42 of 2016, Resolution No. 68 of 2016, Circular No. 44 of 2020, Resolution Ex. No. 106 of 2021 and Resolution Ex. No. 112 of 2021) were drafted and served as explanatory memoranda for its GAAR. These circulars and resolutions provide binding instructions and regulate aspects such as non-binding consultations, sanctions, and the administrative procedures for characterizing elusive acts. The Chilean implementation was characterized by intense political negotiation and a robust regulatory framework.
- **Colombia**
  - Colombia organized a public consultation process.
  - The DIAN prepared a formal Explanatory Memorandum, notably the Legal Compilation of the DIAN (Resolution 4 of 2020), which provides the interpretive basis for applying anti-abuse rules
- **Peru**
  - Although Peru did not hold a formal public consultation, the government prepared detailed Explanatory Memoranda (*Exposiciones de Motivos*) for Legislative Decrees No. 1121 and No. 1422.
- **Mexico**
  - Mexico did not organize a formal consultation process or draft an explanatory memorandum. However, after several failed attempts due to political barriers, the 2020 implementation utilized an **'**Open Parliament**'** (*Parlamento Abierto*) format. This allowed for the inclusion of the business and academic sectors in the public debate before the rule's final adoption.

b) Procedures for reporting tax strategies.

The GAAR Toolkit notes that disclosure standards are an important source for TAs to identify tax avoidance behavior. These rules may require intermediaries (such as tax advisors or accountants) or taxpayers to inform authorities when avoidance schemes are created. Currently, Argentina and Mexico have regimes in place requiring reporting such tax planning schemes.

Table III found in the Annex provides a detailed comparison of these regimes.

Current information regimes:

- **Argentina**, the Complementary Information System for International Transactions (RICOI), established by AFIP General Resolution 5306/2022, requires the reporting of certain international transactions conducted by entities covered by sections a), b), c), and d) of Article 53 of the Income Tax Law (companies, trusts, sole proprietorships, etc.)*. Transactions are reported with related parties, or with entities domiciled, incorporated, or located in non-cooperative or low/no taxation jurisdictions, under certain situations provided for by the regulations (for example, when there is a permanent establishment, works of more than 6 months, schemes to exclude subjects from the CRS or FATCA standard, restructurings, etc.). This replaced the previous IPF regime (GR 4838/2020), which faced legal challenges for requiring 'tax advisors' to report. Under RICOI, the obligation rests solely on the taxpayer (the entity), with exceptions for MSMEs (Tranche I and II).
- **Mexico**, as of January 1, 2020, the Federal Tax Code introduced the Reportable Schemes regime. This allows tax authorities to obtain information on risk areas before implementation, facilitating the publication of administrative criteria and providing legal certainty to taxpayers and advisors. Both tax advisors (who design, market, or implement the scheme) and the taxpayers are obligated parties. A reportable scheme is defined as any plan, project, proposal, advice, instruction, or recommendation that seeks to materialize a series of legal acts that generate a tax benefit in Mexico.
- **Chile**, taxpayers have the possibility of making prior consultations to the SII on planning schemes. The answers to these consultations are binding for the TAs, only for the consultant and the specific case raised.

In summary, although **mandatory disclosure** is not a widespread practice in Latin America, some countries have implemented specific regimes for international risk operations (Argentina) or reportable schemes (Mexico). Others have voluntary consultation mechanisms or the possibility of requesting information during audits. This demonstrates a constant evolution in tools to combat tax evasion.

---

* **Note:** On October 21, 2025, the Argentine tax authority (**ARCA**) issued General Resolution 5772/2025, which **repealed the RICOI regime**. This measure applies to fiscal years ending after May 1, 2025, effectively eliminating the mandatory disclosure requirement for international transactions in Argentina.

In the LAC region, fiscal control frameworks, and international cooperative compliance initiatives – such as the ***International Compliance Assurance Program (ICAP)*** from the OECD- are gaining relevance. Argentina, Chile, and Colombia already participate in ICAP, allowing for a dialogue on risky operations before they become **costly tax contingencies**. Multilateral organizations like the World Bank and CIAT continue to promote these models through technical cooperation and pilot programs. These initiatives require TAs to maintain high institutional maturity, particularly in risk management, data interoperability, and the technical capacity to evaluate complex international operation/s, and a clear regulatory framework.

2.3 Application of GAARs.

Chapter 6 of the Toolkit focuses on the application of GAARs, detailing the procedures necessary for its effective operation. A fundamental aspect highlighted is the development of capacities within the tax administration.

Regarding internal procedures, a clear assignment of responsibilities for evaluating GAAR cases is crucial to avoid internal misunderstandings and protect sensitive taxpayer information. It is recommended to establish a defined evaluation procedure, which may include flowcharts or step-by-step guides to ensure consistent application.

Maintaining an internal database of GAAR cases is also helpful for maintaining interpretative consistency.

Communication with the taxpayer is vital; general guidelines and explanations about the GAAR should be provided, possibly through tax administration websites. Publishing descriptions of **tax avoidances schemes** targeted or confirmed as abusive may increase certainty for taxpayers, although such lists are not exhaustive. The taxpayer's participation in the ongoing case is essential, hey must be informed of the grounds for invoking the GAAR, the procedure involved, and their dispute resolution options.

Finally, the chapter deals with dispute resolution procedures. Access to standard dispute resolution mechanisms should be granted. Dispute resolution agreements may be offered, sometimes involving the waiver of penalties if the taxpayer corrects his position.

Given the complexity of GAAR cases, it is important to develop the capacity of the courts, possibly through training so that judges can evaluate the facts under both a **fiscal and legal logic**.

The **Chilean case** is very particular, given that, even if the SII detects a possible GAAR application, the Director must petition the Tax and Customs Court (TTA) to formally declare the existence of avoidance

through abuse or simulation. Without such a judicial declaration, the SII cannot issue an assessment or collect the tax. These rulings may be appealed to the Court of Appeals and, eventually, reviewed by the **Supreme Court**.

Generally, the courts play a crucial role in the TAs' application of these clauses. For example, recent judgments of the Supreme Court of Spain, which has reaffirmed its doctrine on the limits of the **characterization power** of the Tax Administration under Article 13 of the General Tax Law (LGT in Spanish).

A judgment dated April 29, 2025 states that the Administration cannot recharacterize a legal transaction, such as a transfer of capital, without resorting to the general anti-avoidance rules (Arts. 15 and 16 LGT). This reiterates the previous jurisprudence (STS of July 2, 2020, appeal No. 1433/2018) that denies the requalification of income only on the basis of Art. 15 LGT). In addition, it indicates that, if a tax avoidance purpose is suspected, it is mandatory to open the procedure under Art. 15.2 LGT with a report from the Advisory Committee, and failure to obtain such a report renders the act **null and void**.

In addition, two rulings dated May 5, 2025, in appeals 8599/2023 and 4066/2023, annul administrative proceedings and previous rulings that completely disregarded the actual legal transaction (such as payments for services to agents in appeal 8599/2023) in order to assert the existence of a different one, concluding that this is an 'excess' that goes beyond the power of classification of the Art 13 LGT and that is not enough for the regularization conducted. Specifically in the resource 4066/2023, the Supreme Court affirms that to modify the taxation based solely on Art. 13 LGT, without applying the Arts. 15 or 16 LGT, violates the law and its jurisprudence; if there is simulation, it must be formally and expressly declared in the act of settlement, and not to do so, or qualify an activity as artificial without formally invoking Art. 15 or 16, constitutes an invalidating irregularity that leads to the full nullity of the settlement and associated penalties.

In summary, the Supreme Court emphasizes that administrative powers such as qualification are not for free use and that, when the Administration considers that what has actually been done differs from what has been declared or is artificial, it must follow the specific procedures of Articles 15 (conflict in the application of the norm) or 16 (simulation) of the LGT, since the mere qualification of Art. 13 LGT is not enough and skipping these steps leads to the nullity of the administrative action.

Finally, for avoidance cases related to tax treaties, it is recommended to grant access to the **Mutual Agreement Procedure (MAP)**, although this does not mandate the resolution of double taxation resulting from the GAAR's application.

a) Intervening officials (profile and training).

Regarding the officials responsible for applying these standards (profile and training), tax administrations define a diverse range of professional backgrounds. Specific observations include:

- **Brazil:** Specialized teams dedicated to identifying and challenging **abusive tax planning**.
- **Chile:** the avoidance is declared by the TTA at the request of the SII Director, following an audit conducted by teams of accountants, auditors, tax attorneys, commercial engineers, and valuation experts.
- **Ecuador:** Legal counsel, attorneys, auditors, and other specialized officials participate in risk detection and tax enforcement.
- **Honduras:** in addition to the Head of Tax Audit (with expertise in accounting, auditing, and experience in tax processes), the Head of Intelligence (specialized in financial, tax, economic analysis, and experience in tax management) participates.
- **Peru:** Revenue agents of the SUNAT audit areas are initially in charge, with profiles of lawyers, accountants, administrators, or economists. Subsequently, they refer the cases to the Review Committee.
- **Uruguay:** assigns officials from the Audit Division and the Legal Department of the Tax Technical Division.

Regarding the training of officials responsible for implementing these standards, countries have mentioned specific capacity building initiatives:

- **Chile:** provides internal and external training programs, internships, and case-study workshops.
- **Honduras:** utilizes to technical assistance to strengthen the capacity to identify complex tax planning schemes.
- **Mexico:** internally, the TA has strategies that governs the application of Article 5-A of the Federal Tax Code.
- **Peru:** implemented a training program following the publication of the application parameters for Standard XVI, in coordination with the Customs and Tax Institute of SUNAT, including workshops with national and international speakers (including the March 2025 workshop in Lima).

b) Internal procedures for applying and evaluating the GAARs and the importance of creating and maintaining a case directory.

Regarding the internal procedures for applying and evaluating the GAARs, the following experiences are mentioned

- **Colombia** The DIAN issues binding administrative rulings (*conceptos de cumplimiento*) to its officials. these rulings are mandatory and clarify the standardized application of the GAAR. Furthermore, the DIAN publishes these interpretive rulings on its website via its Legal Compilation, ensuring accessibility for the public.
- **Ecuador** Utilizes a 'Technical Operating Guideline' specifically for the 'Initial Analysis of the Deductibility of Costs and Expenses for Foreign Payments,' which provides a standardized framework for analyzing outbound payments.
- **Honduras** maintains a Risk Policy and the Internal Tax Compliance Management Guide that establish risk-based strategies.
- **Mexico** details the operating policies of the **Collegiate Body** in its internal strategies, which mainly consist of the following points:
    - The tax authorities exercise their verification powers.
    - Based on the facts detected during these procedures, the authorities submit a case to the Collegiate Body via a formal technical opinion.
    - The legal grounds and reasons for the proposals submitted to the collegiate body are reviewed and validated.
    - The opinion is forwarded to the technical secretary.
    - The taxpayer is informed of the suspension of the statute of limitation for completing the verification powers.
    - The tax authority is informed of collegiate body's resolution.
    - Once the opinion is issued, the suspension is lifted, and the taxpayer is notified.
    - If the resolution is positive (supporting the GAAR's application), the taxpayer is informed and given the opportunity to exercise their right to be heard, providing information and documentation to rebut the presumption of a lack of business purpose.
- **Panama** publishes the resolutions of the Tax Administrative Tribunal in cases where the GAAR has been used.

- **Peru** approved the substantive and formal parameters by Supreme Decree and has general regulations on the inspection procedure, with particularities for cases that are referred to the Review Committee.
- **Chilean Procedure**: The following flowchart contained in SII Circular 41 graphically presented the procedure used by the SII of Chile to apply its GAAR:
    - Initiation: Indications of potential tax avoidance are detected.
    - Initial report: the operational area submits background information to the Avoidance Analysis Office (OAE in Spanish).
    - Evaluation: the OAE analyzes and submits a report to the National Director.
    - Subpoena: if applicable, a formal subpoena is prepared and served on the taxpayer.
- **Taxpayer's response**:
    - Satisfactory: Leads to rectification, payment, reconciliation, or a closing draft.
    - Does not respond or the response is unsatisfactory: A formal requirement is suggested.
        - Request: The Legal Sub directorate drafts the requirement, which must be approved and signed by the Director.
        - Judicialization: the requirement is submitted to the competent Tax and Customs Court.

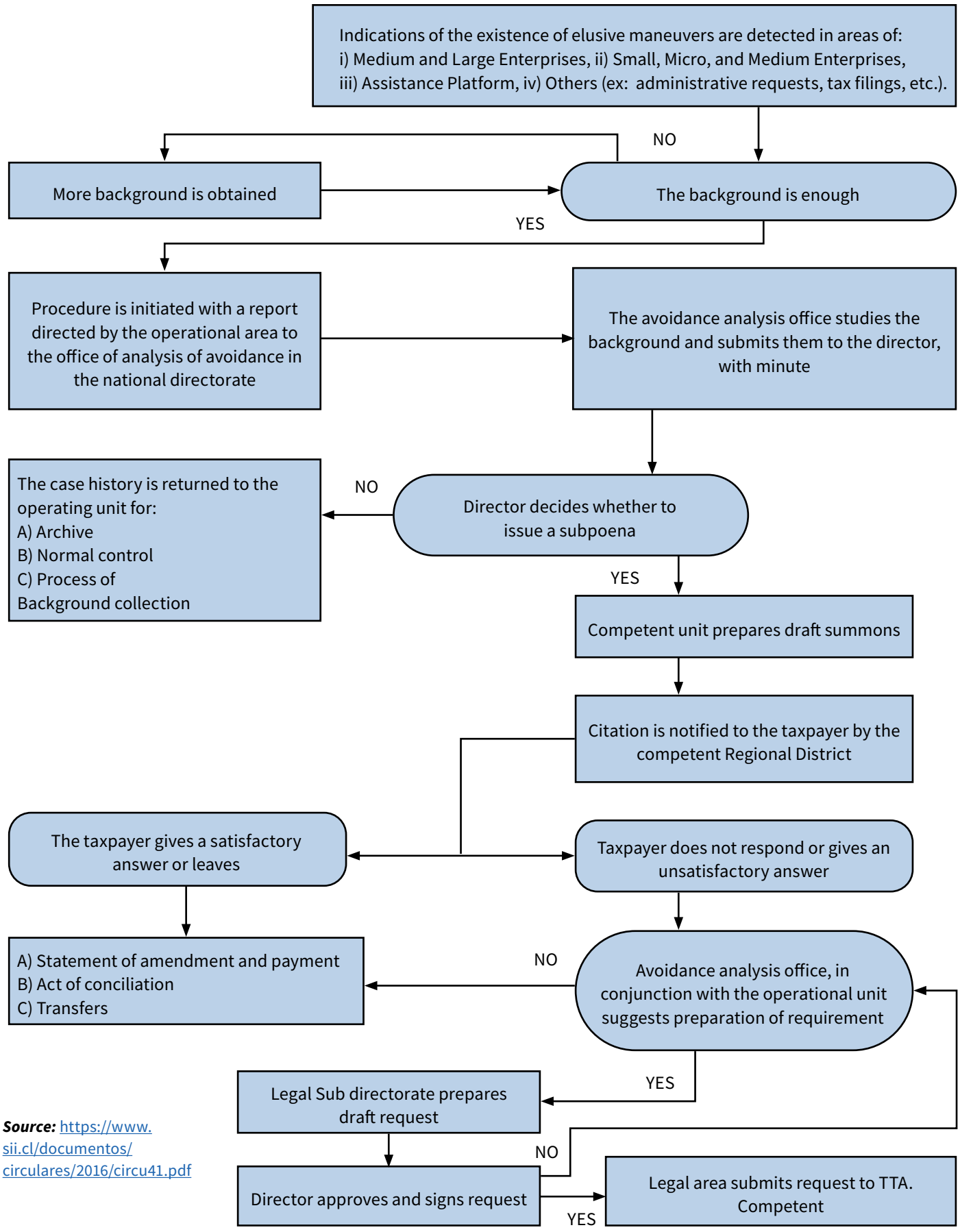
This flow of the administrative procedure was included in that Circular.

As of the changes promoted by Laws 21.713 and N° 21.716, the SII published Circular N° 31 of April 17, 2025 that invalidates Circular N° 65 of July 23, 2015 that had been modified by the aforementioned Circular N° 41 of July 11, 2016 that contained the latest version of the aforementioned operational flow reproduced above.

The Law modified the administrative procedure for the qualification of avoidance, contained in Article 4° quinquies, the text of which was replaced in its entirety. Under the new text of the article 4° quinquies, the existence of abuse or simulation referred to in Articles 4° ter and 4° quater will be requested by the Director, after summoning the taxpayer and, where appropriate, declared by the competent Tax Tribunal, in accordance with the procedure established in Article 160 bis.

The new circular provides general instructions on the administrative procedure to be followed in cases where tax avoidance practices involving abuse of legal forms or simulation are detected, as well as on coordination between the different areas of the Service, both at the regional and national levels, with the aim of auditing taxpayers who use such practices and, where appropriate, the summons procedure

Basic flow of the instructed administrative procedure.



Source: https://www.sii.cl/documentos/circulares/2016/circu41.pdf

referred to in Article 4 quinquies is carried out and, subsequently, the judicial request procedure regulated in Article 160 bis is initiated.

The new procedure aims to adjust the control of elusive practices due to abuse of legal forms or simulation, coordinating the different areas of the Service for the citation and, if appropriate, the judicial injunction.

Under the Circular, this procedure seeks to ensure the objective application of anti-avoidance rules and compliance with tax obligations, while maintaining the protection of the legality and autonomy of taxpayers.

Peru's GAAR Procedure:

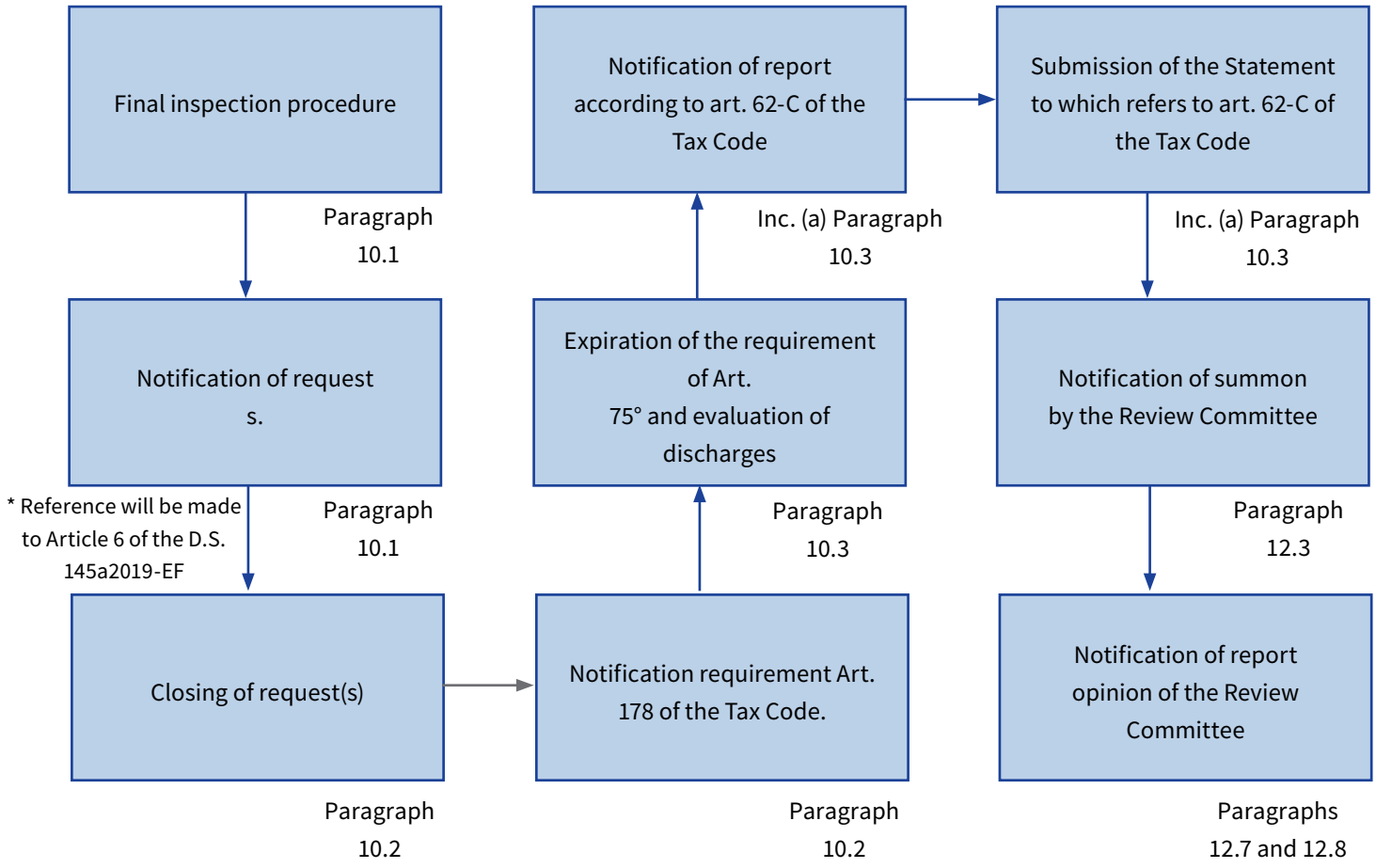
- Start of inspection
    - SUNAT notifies requirements to the taxpayer (Art. 6 DS 145-2019-EF).
- Preliminary assessment
    - The initial requirements are closed.
    - SUNAT issues preliminary report on possible avoidance (Art. 62-C CT).
- Taxpayer's Rebuttal
    - An Additional requirement is notified (Art. 75 CT).
    - The taxpayer submits the tax returns and formal rebuttals.
- Technical review
    - The auditor's report is forwarded to the Review Committee's opinion (composed of three SUNAT members).
    - The Committee may amend or validate the findings of the report.
- Final notification
    - The taxpayer is notified of the opinion of the Review Committee, which is final and unappealable at administrative level.
    - If avoidance is confirmed, SUNAT applies the rule that would have corresponded to the customary or proper acts.

Regarding the creation of an **internal database of cases**, Chile, Colombia, Ecuador, and Peru do report maintaining one, though they are not always public. The creation and maintenance of an internal database of GAAR cases is recommended to ensure consistent application and serve as a source of guidance to the responsible officials.

The **Toolkit** suggests that an internal database of GAAR cases should be organized to allow consistent application and facilitate both consistent enforcement and potential legislative reform. Cases should be classified into the following general categories:

- Court- confirmed cases: Instances where the tax administration invoked the GAAR, and its application was ratified by the judicial instances.
- Cases not upheld by the courts: Instances where the GAAR was invoked, but the courts rejected its application.
    - Non-invoked cases: Those in which the TA considered the possibility of invoking the GAAR but finally decided not to do so.

Formal Parameters



The aforementioned paragraphs are taken from Articles 10° and 12° of DS 145-2019-EF

Source: https://orientacion.sunat.gob.pe/7294-05-pasos-empresas

In addition to these classifications, the database should include other useful features for analysis, such as:

- The amount in question of the tax benefit or avoidance.
- The countries involved in the avoidance scheme.
- The business sector to which the taxpayer belongs.
- Any other relevant characteristics of the transaction in question.

Table IV found in the Annex provides a comparison of the **Special procedures established by Chile, Colombia, Mexico, and Peru** to apply GAARs standards. For example, the **outlines of the applicable procedures** in **Chile and Colombia**.

c) Taxpayer guidance, awareness, and transparency, in GAAR application.

Effective communication with taxpayers is vital to building trust. This includes the publication of guidelines and explanations on the application of GAARs, as well as the description of tax avoidance schemes.

In terms of guidance and assistance to the taxpayer, awareness, and transparency on the implementation of the GAAR, several countries have taken measures.

- **Chile** provides guidance information on its website and has organized awareness-raising campaigns in partnership with public-private entities.
- **Peru** also offers information on its website and created an information module after the publication of the parameters of the XVI Standard.
- **Panama** publishes the resolutions of the Tax Administrative Tribunal.

d) Lists of avoidance schemes.

Catalogues of tax evasion or avoidance schemes serve as a tool to provide legal certainty. Regional examples include:

- **Chile** publishes an annual **Catalogue of Tax Schemes**. It also maintains a binding consultation mechanism on the application of GAARs or SAARs, and the responses are made public.
- **Ecuador** reports on '**Aggressive Tax Planning Practices**' on its website.
- **Peru** has been publishing the **Catalogue of High Tax Risk Schemes** since 2020.

Peru also publishes an annual Review Committee management report[2] in compliance with the Sixth Final Complementary Provision of Supreme Decree 145-2019-EF. This report details the number of cases received in the Committee, the number of cases managed, as well as the meaning of the opinions issued, ensuring that tax secrecy and the confidentiality of analyzed information are maintained.

The **Catalogue of High Tax Risk Schemes** is a SUNAT publication available on its web portal. It currently contains 24 general characterizations of transactions that may imply a tax breach and are subject to evaluation under Standard XVI.

Notably, of these 24 schemes, Scheme 13 has specifically established the existence of sufficient elements to trigger Standard XVI. In this scheme, the taxpayer artificially increases leasing service expenses, resulting in a lower Corporate Income Tax payment (at the statutory rate) due to inflated real estate rental deductions.

Table V in the Annexes provides a detailed comparison of the catalogues and scheme lists across these countries.

e) Advisory or approval panels and committee

Several countries include expert panels as an auxiliary aid in the study of tax avoidance cases, in order to ensure a **fair, cautious, and consistent application**.

- **Chile:** Previously maintained an **Anti-Avoidance Committee** composed of the Director and the Deputy Directors of the Legal, Regulatory and Control areas of the SII. This committee was advisory in nature and its pronouncements were unprecedented. The members had to be officials holding the indicated positions.
- With the entry into force of Laws No. 21,713 and No. 21,716 (2024), and as clarified by SII Circular No. 31, the legally enshrined Executive Committee replaced this body. Unlike its predecessor, which was established by an administrative resolution, the Executive Committee now has statutory backing. The Director of the Service holds the chairmanship, and it includes the Deputy Directors of Regulation, Enforcement, and Legal Affairs. Its primary function is to analyze reports of potential avoidance and recommend whether the Director should file a request for a declaration of abuse or simulation before the competent Tax and Customs Court (TTA). It may also recommend enforcing a SAAR or conclude that no grounds for an avoidance challenge exist. While the Committee reaches decisions by absolute majority and provides written rationales, the final decision to petition the Tax Court rests exclusively with the Director.

[2] Access to the reports: https://orientacion.sunat.gob.pe/reporte-de-gestion-comite-revisor.

- **Mexico** has instituted a Collegial Body composed of three officials of the Ministry of Finance and Public Credit (SHCP) and five officials of the SAT, including the heads of various administrative units. Its opinion is binding on the tax authority in the exercise of its verification powers but does not constitute a precedent.
- **Peru** maintains a Review Committee made up of three full-time members and three alternates from SUNAT, with a president and a secretary appointed by the National Superintendent. The opinion of the Review Committee is binding on the Audit Division of SUNAT, but does not constitute an appealable act. To serve as a member, one must be a lawyer or accountant with at least ten years of experience in tax assessment or auditing in the public sector, as well as a specialization or master's degree.

Table VI in the Annex provides a detailed comparison of the composition, functioning and legal effects of the pronouncements issued by these committees or panels.

B) GAARs and international treaties

Introduction

The schemes and operations that a GAAR seeks to combat often involve multiple jurisdictions. This international dimension increases the complexity of applying a domestic GAAR, particularly when the transaction involves the application of one or more **Double Taxation Conventions (DTCs)**. This is due to the **superior hierarchy** that DTCs generally hold over domestic rules—including GAARs—and the application of the principle of ***pacta sunt servanda*** established in Article 26 of the **Vienna Convention**.

The unilateral application by some jurisdictions of their domestic GAAR to deny the benefits of a DTC or ignore its effects in cases of avoidance or abuse has been controversial and widely questioned, with different results for TAs, as can be seen in the two cases analyzed during the Lima workshop (March 2025).

Historically, some countries ensured the application of their domestic GAARs and other anti-avoidance measures by including a specific enabling provision within the treaties themselves, enabling the Contracting States to apply such domestic anti-avoidance rules.[3]

[3] This authorization is granted either through a specific provision or a **'Saving Clause,'** which stipulates that the DTC does not affect a Contracting State's right to tax its own residents. This allows a State to apply its full suite of domestic anti-avoidance rules. Since 2017, the **Saving Clause** has been included in both the UN and OECD Model Conventions as a result of the **BEPS Project**.

The OECD and the UN have sought a more structural solution by incorporating the **Principal Purpose Test (PPT)** into **Article 29.9** of the 2017 Model Conventions. The PPT is a specific **Treaty GAAR**, typically included in the 'Entitlement to Benefits' article (Article 29). It has become a global standard, serving as the primary method for complying with the **BEPS Action 6 Minimum Standard** on treaty abuse.

Consequently, most DTCs negotiated since 2017 now include a PPT. For older treaties (or those without a PPT), the options for incorporating a Treaty GAAR include accession to the **Multilateral Instrument (MLI)** or bilateral renegotiation. Renegotiation should be prioritized in cases where a risk assessment—based on the CIAT GAAR Toolkit—concludes that the existing DTC poses a high risk of avoidance.

Despite the increasing inclusion of the PPT via the MLI, a significant number of DTCs still lack a Treaty GAAR. In these cases, **TAs** may face difficulties applying their domestic GAAR. Although the **Commentaries to the Model Conventions** support the interpretation that domestic GAARs are compatible with DTCs, success often depends on judicial acceptance of those Commentaries and whether the domestic GAAR aligns with the 'guiding principle' on treaty abuse.

Therefore, it is critical to review the guidance provided by the **Commentaries** regarding the application of domestic GAARs to deny benefits in treaties lacking a PPT clause. Section 2.4 analyzes these Commentaries, and the limitations **TAs** must consider. Additionally, we review the two cases from the Lima Workshop illustrating the application of national GAARs to DTCs without treaty-based anti-abuse clauses—both of which resulted in adverse outcomes for the **TAs**. Section 2.5 covers the implementation of the **PPT**, while Section 2.6 addresses the **Mutual Agreement Procedure (MAP)** in the context of PPT interpretation.

2.4 Application of domestic GAARs to cases covered by Double Taxation Conventions (DTCs).

As noted in the Introduction, a significant number of DTCs still lack a specific **Treaty GAAR**. Therefore, it is essential to determine the feasibility of applying a domestic GAAR in cases of tax abuse. This section examines the most relevant aspects of the **Commentaries to the Model Conventions** regarding the application of national GAARs to situations covered by a DTC and reviews two court cases with opposing results.

Evolution of the Model Conventions

- **1977–2003:** The compatibility of national anti-abuse standards with DTCs has been addressed in the OECD Commentaries since 1977. However, the Commentaries prior to 2003 were somewhat ambiguous. They reflected a majority position—that DTCs 'should not (...) facilitate tax avoidance

and evasion'[4] and thus should not prevent the application of domestic anti-abuse rules—alongside a minority view that DTCs should prevail over national standards unless a specific **'Saving Clause'** was negotiated.

- **2003 update**: OECD Commentaries were updated to include a detailed analysis of member states' positions on **treaty abuse**. This update concluded clearly that DTC benefits should not be granted for transactions constituting an abuse of the convention, establishing the following **'Guiding Principle'**:

  > *'A guiding principle is that the benefits of a double taxation agreement should not be granted when one of the main objectives for making certain transactions or agreements is to obtain a more favorable tax position and achieve that more favorable tax treatment in such circumstances would be contrary to the object and purpose of the respective provisions.'*[5]

The above Comments, including the 'Guiding Principle,' were reproduced by the Comments to Article 1 of the 2011 UN Model Convention.

- 2017 expansion: the Commentaries to the OECD and UN Model Conventions were again expanded, clarifying that in the vast majority of cases, national GAARS do not conflict with the DTCs and that therefore they can be applied to cases of treaty abuse. However, a potentially important caveat is introduced: the internal GAAR must be consistent with the '**Guiding Principle**' of the Commentary (which is maintained as part of the Commentary to the OECD and UN 2017 Models). Thus, if the national GAAR is significantly broader or grants more discretion to the tax authority than the 'Guiding Principle' would allow, it might not be applicable for purposes of denying the benefits of the DTC involved in the abuse cases covered by the domestic GAAR.

In **Conclusion:** According to the OECD and UN Commentaries (since 2003 and 2011, respectively), domestic GAARs are applicable to convention abuse cases, provided they are compatible with the **Guiding Principle**.[6]

However, the possibility of applying a domestic GAAR to a case involving a DTC, based on the foundation what is established in the Commentaries depends on a multiplicity of factors, among which are:

---

[4] Paragraphs 7 and 10 of the Commentary to Article 1 of the OECD Model Convention.

[5] Paragraph 9.5 of the Commentary to Article 1 of the 2003 OECD Model Convention.

[6] Paragraph 77 of the Commentary to Article 1 of the 2017 OECD Model Convention and paragraph 42 of the Commentary to Article 1 of the UN Model Convention.

- **The legal weight or authority** given by the national administrations, and especially the courts and tribunals, to the interpretations contained in the Model Conventions Commentaries.
- **The date on which the DTC** under study was concluded and the specific Model on which the parties relied during the negotiation (e.g. whether it was post- 2003 or post- 2011, as applicable).
- **The interpretation approach:** For DTCs in force prior to 2003 (or 2011), it must be determined whether the jurisdiction has adopted a **dynamic interpretation** of the Commentaries. Additionally, it should be considered whether the **DTC** includes a specific provision—such as a **Saving Clause**—that expressly permits Contracting States to apply their domestic anti-avoidance rules.[7]

Conflicting jurisprudential cases

Historically, TAs in several countries have approached their internal GAARS to disallow DTC benefits, alleging the existence of abusive operations, with varying results. During Session 3 of the Lima workshop (March 2025), addressed the interaction between domestic GAARs and treaty-based anti-avoidance rules, two such cases were highlighted.

The manner in which the domestic GAAR was directly applied to limit the benefits of the CDI in each of these cases was not discussed in detail.

- **The *Molinos* Case (Argentina):**

Relevant facts:

- **Molinos Río de la Plata S.A**. (Molinos Argentina) established a subsidiary in Chile named '**Molinos de Chile y Río de la Plata Holding S.A.**' (Molinos Chile) under the 'investment platform company' (*sociedad plataforma*) regime. Molinos Chile was incorporated one year after the legislation creating these investment platforms entered into force.
- Molinos Argentina owned 99.99% of the shares of Molinos Chile, having capitalized of the latter through the contribution of majority shareholding in its subsidiaries in Peru and Uruguay.

[7] The questions and steps regarding the acceptance of the OECD/UN Model Commentary as a tool for interpreting the IDCs contained in Figure 1 of the 'GAAR Toolkit' may help in the evaluation of the factors referred to here. Said Figure 1 provides a flowchart for assessing whether a tax treaty should be renegotiated or whether the national GAAR or the 'Guiding Principle' can be applied. This diagram guides you through questions about the coverage of the IML, the existence of a national GAAR, specific clauses in the treaty, and the acceptance of the OECD/UN Model Commentary as an instrument of interpretation.

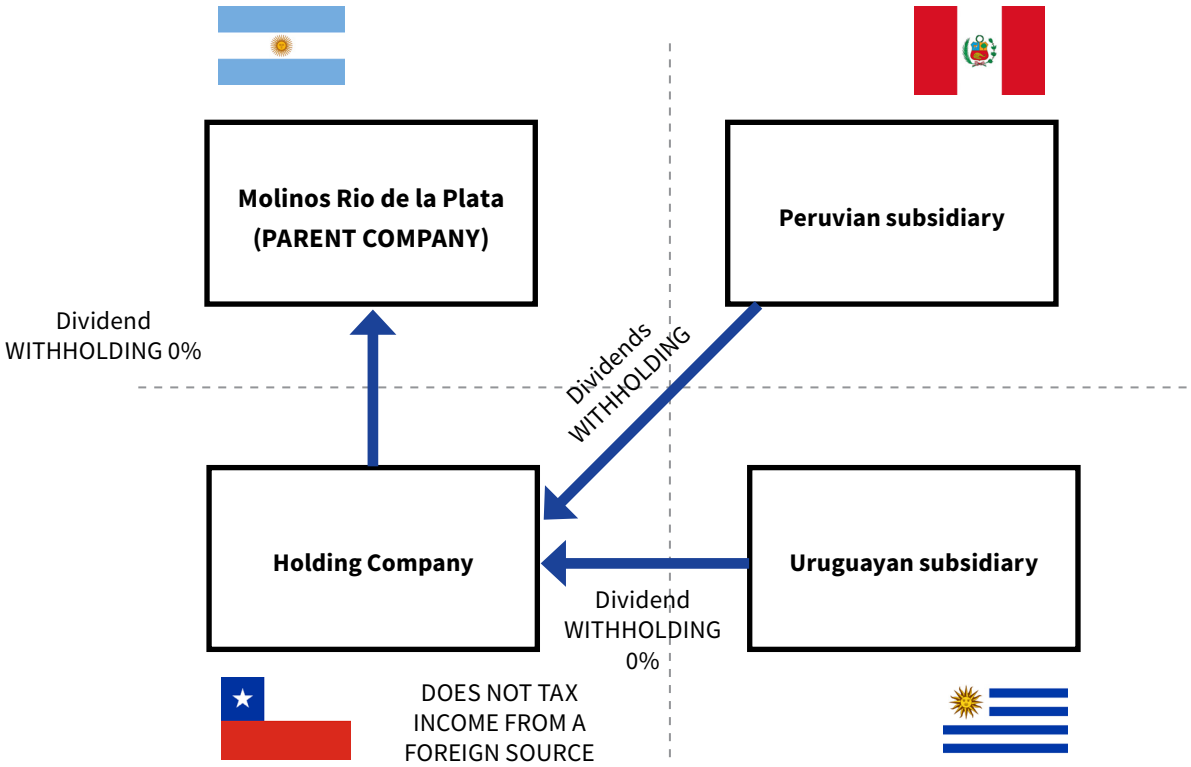
- Between 2004 and 2009, the subsidiaries in Peru and Uruguay distributed dividends to Molinos Chile, which in turn distributed dividends (originating from the dividends distributed by the subsidiaries) to its parent, Molinos Argentina.
- Molinos Argentina included the dividends distributed by Molinos Chile in their tax returns as **non-taxable income**, under Article 11 of the **Argentina-Chile DTC** of 1985, according to which dividends distributed by a company resident of a contracting state could only be taxed in that state (Chile).
- The former AFIP -now ARCA-, applying the **principle of economic reality**, considered that Molinos Argentina had made an abusive use of the DTC. It argued that Molinos Chile (a company that, due to its status as an 'investment platform' was not subject to income tax in Chile on its income from dividends from foreign companies) was used as a '**conduit company'** to receive the dividends from Peru and Uruguay and thereby avoiding the income tax in Argentina that would have otherwise been due.

Summary of the judicial decision:

- The Supreme Court of Argentina, in a majority ruling, considered that the domestic GAAR (principle of Economic Reality included in Article 2 of Law 11,683 of 1998) to be applicable to disregard the benefits of the DTC between Argentina and Chile. The decision prioritized economic reality over legal form ('substance over form'), thus prioritizing the **spirit, object, and purpose** of the DTC (avoid the double taxation as well as not facilitate a double non-taxation) over a literal interpretation.
- In the judgment, the Court noted that applying the domestic GAAR is in accordance with the Argentine constitutional and public law principles to which all international treaties signed by Argentina must conform, in particular the **principles of reasonableness and prohibition of abuse of law** (article 27 of the Constitution).
- Under the Court, the application of the domestic GAAR in the Molinos case is consistent with the provisions of **article 31 of the Vienna Convention**, according to which treaties must be interpreted in good faith and according to their object and purpose.

The following outline exposes the Argentine case:

Case study: Molinos Rio de la Plata (TFN 2013) (CNACSF 2016)



- **Alta Energy Case (Canada):**

Relevant facts: In 2011, Blackstone LP and Alta Resources LLC, two US-based entities, incorporated **Alta Energy Partners LLC** in Delaware (USA).

- Alta Energy Partners LLC, meanwhile, incorporated Alta Canada, a subsidiary resident in Canada, to explore and acquire exploitation licenses for petroleum resources in Alberta, Canada.
- In 2012, anticipating a future sale of Alta Canada, the group underwent a restructuring: (i) the US entities Blackstone LP and Alta Resources LLC formed **Alta Energy Canada LLP** (a Canadian partnership), which in turn owned 100% of **Alta Energy Luxembourg**; and (ii) the Luxembourg entity acquired the shares of Alta Canada from Alta Energy Partners LLC (the Delaware company).

- In 2013, Alta Energy Luxembourg sold its shares in Alta a Canada to Chevron (a third party, not a member of the Alta Energy group), having reported capital gains worth $380 million. Pursuant to a payment order, Alta Energy Luxembourg allocated the proceeds of the sale to Alta Energy Canada LLP. In return, Alta Energy Canada LLP issued promissory notes in favor of Alta Energy Luxembourg, which were offset, in part, against an existing interest-free loan and a participatory loan.

- Alta Energy Luxembourg reported all capital gains from the sale of Alta Canada shares to Chevron in both Luxembourg and Canada. However, in the tax return filed in Canada, Alta Energy Luxembourg reported such earnings as '**income not obtained in Canada**;' it did so, under Article 13(4) and (5) of the Canada-Luxembourg CDI of 1999.

- Under Article 13(4) of the DTC between Canada and Luxembourg (hereinafter, the 'DTC'), capital gains obtained by a resident of Luxembourg as a result of the disposal of shares in a company that derive their value mainly from real estate located in Canada may be taxed by Canada, except in the case of real estate in which the company conducts its business ('commercial real estate exemption'). In such cases, the applicable provision is the general rule contained in Article 13(5), granting the sole right of taxation to the country of residence (Luxembourg).

  Thus, according to Alta Energy Luxembourg, the profits resulting from the sale of Alta Canada shares could only be taxed in Luxembourg (a country of which Alta Energy Luxembourg was a resident).

- The **Canada Revenue Agency (CRA)** disagreed with Alta Energy Luxembourg's position and denied the benefits granted by Article 13(4) and (5) of the DTC between Canada and Luxembourg based on the **domestic GAAR**. According to CRA, the transaction conducted by Alta Energy Luxembourg was an avoidance operation that constituted an **abuse of the provisions** contained in Article 13(4) and (5) of the DTC, for not fulfilling and betraying its object and purpose, so the DTC was not applicable to the transaction in the terms of the domestic GAAR. The object and purpose of the 'commercial real estate exemption' contained in Section 13(4) was to allocate tax jurisdiction to the jurisdiction that has the strongest connection to the income. in this case, the one where the company that develops the business that values the real estate located in the other state is based and through which the company's main business is also conducted.

Summary of the judicial decision:

- The Canadian Supreme Court of Justice (the highest court in this case) ruled, by a majority of 6 to 3, in favor of the taxpayer (Alta Energy Luxembourg), declaring that there was no abuse in the operation under analysis and that therefore the domestic GAAR was not applicable for the purpose of denying the benefits of Article 13(4) and (5) of the DTC between Canada and Luxembourg.

- The Court relied on the existing jurisprudential background in Canada on the subject to analyze the case. According to this, the application of the domestic GAAR is a process that requires establishing three elements, namely: (i) the existence of a tax benefit derived from the transaction; (ii) whether it is a tax avoidance operation; and (iii) whether the avoidance operation is abusive. Also, to establish whether an operation is abusive, case law has indicated that an **Abuse Test**, or proofing, must be performed, which consists of two steps:

  a) Step 1: Determine the object, spirit and purpose of the provisions granting the tax benefit being invoked.

  b) Step 2: Analyze the facts to establish whether or not the transaction is consistent with that object, spirit, and purpose.

- The Court focused its analysis on determining whether the operation was abusive (third element of the process), following the steps described above and concluded:

- That the 'commercial real estate exemption' enshrined in Article 13(4) of the DTC is an intentional deviation by Canadian negotiators from the general rule on the disposal of shares deriving the majority of their value from real estate located in one of the contracting states, the purpose of which is to attract more foreign investment (which is explained, in part, by the fact that it is a deviation that Canada has included in only a small number of DTCs).

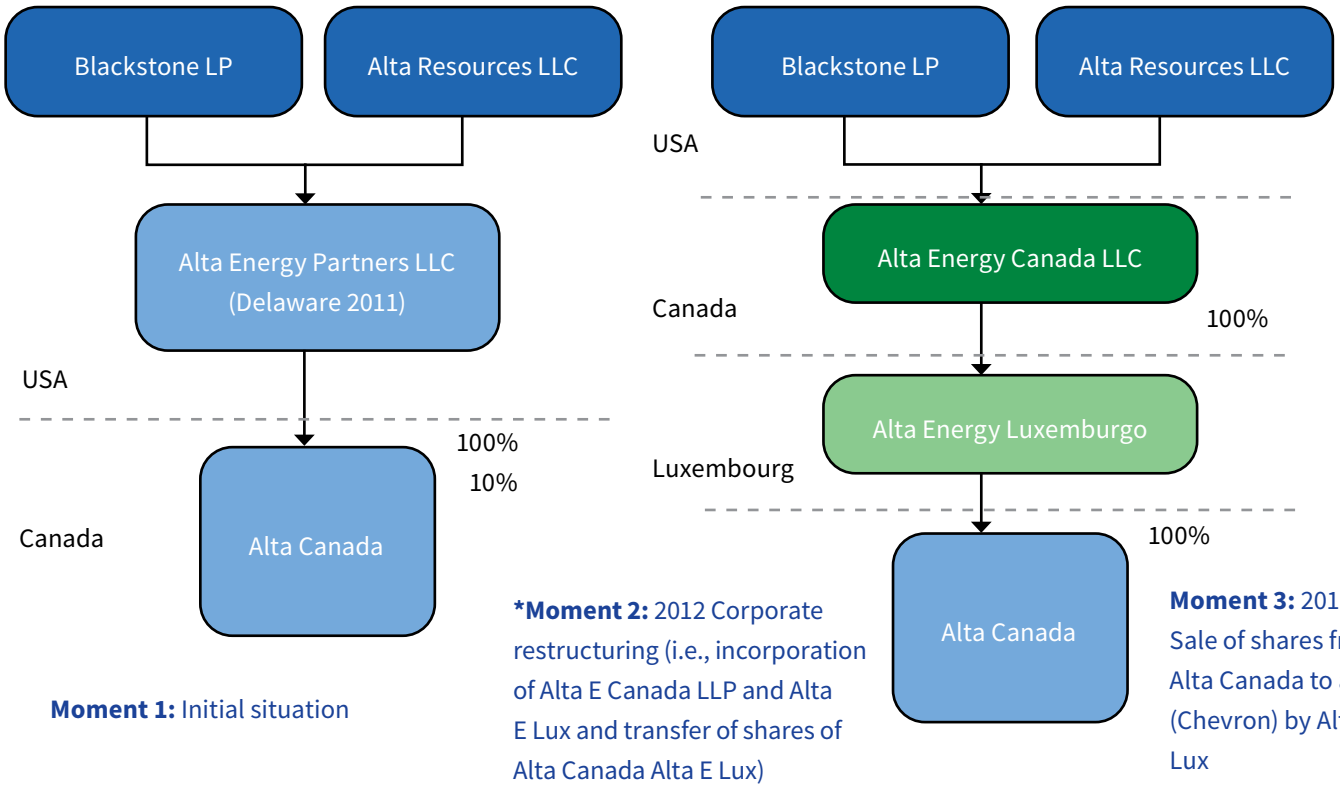
  That, contrary to the Tax Agency's allegations, nothing in the DTC allows to conclude that the purpose of the DTC was to limit the application of the 'commercial real estate exemption' to residents of Luxembourg with '**sufficient substantial economic connections**' to Luxembourg. According to the Court, it is reasonable to assume that at the time of negotiating the DTC, the Canadian negotiators were aware of Luxembourg's tax system and treaty network, so that they were aware of the possibility that companies resident in Luxembourg without additional connections to Luxembourg could access the benefits of the DTC. According to the Court, if the negotiators had wanted to limit access to the benefits of the DTC to certain companies, they would have licitly included a Limitation on Benefits (LOB) clause.

- Neither the Tax Agency nor the Courts can ignore the **object and purpose** of the provisions enshrined in Article 13(4) and (5) of the DTC to change what has been agreed by the parties (application of the principle ***pacta sunt servanda***), protected by the domestic GAAR.

- Consequently, **Alta Energy Luxembourg** was entitled to the benefits referred to in Article 13(4) and (5) of the DTC and the capital gain was exempt in Canada.

The following outline summarizes the Canadian case:

Some cases – Alta Energy Case (Canada – Lux.)



2.5 Application and interpretation of GAARs contained in the DTC

Introduction

By including a Treaty GAAR such as the PPT (Principal Purpose Test) directly in the DTC, countries ensure its application to cases of treaty abuse. In other words, the treaty GAAR included in the very body of the DTCs undoubtedly have a mandatory and binding character, so they can be invoked as a basis for denying the benefits of a DTC in cases of abuse, thus avoiding the discussions and uncertainty that can be generated around the interpretation of the DTCs based on the Model Commentaries mentioned in Section 2.4.

The inclusion of the PPT in the DTA has become a common practice since 2017, thanks to its inclusion in the OECD and UN Model Conventions and in the IML, as well as its role in compliance with the BEPS minimum standard on combating treaty abuse. The inclusion of a standard PPT is also the recommendation contained in the '**GAAR Toolkit**' for those countries that choose to include a treaty GAAR in their DTCs.

The standard PPT included in the Models Conventions and the MLI basically codified the 'Guiding Principle' established in the Model Commentaries. Thus, in accordance with the provisions of the PPT, a TA may deny the benefits of the DTC when: (i) it is reasonable to conclude, considering all the facts and circumstances, that obtaining that benefit was one of the main purposes of any arrangement or transaction that resulted, directly or indirectly, in that benefit; and (ii) it is established that granting that benefit in such circumstances would not be in accordance with the object and purpose of the relevant provisions of the DTC.

As can be appreciated, the PPT refers to concepts that are common or similar to those contained in many of the domestic GAAR[8], namely:

- Arrangement or transactions
- Tax benefits (in the case of the PPT, those derived from the application of the DTC)
- Subjective element, relating to the conduct of the taxpayer (e.g. purposes of the agreement or transaction, reasonableness, facts, and circumstances)
- Objective element (relating to the object and purpose of the relevant provisions of the DTC)

Such consistency between the domestic and treaty GAARS is advisable not only from a conceptual point of view, but also from a practical one, as will be seen below.

Interpretation and Implementation of the PPT:

The relatively recent adoption and inclusion of the PPT in the DTCs means that there is still not enough practical experience regarding its implementation. It is possible to foresee some of the challenges that TAs will face for the correct application and interpretation of the PPT. Some of these challenges are common to those that TAs already have to face in relation to domestic GAARS, but others stem from the treaty-based nature of the PPT. These include:

[8] See 'GAAR Toolkit', Section 5.4 and Section 4 of this document.

- **Common challenges to the implementation of a domestic GAAR**:
  - As mentioned above, the concepts incorporated as elements in the PPT are similar, if not the same, as those incorporated in the domestic GAARs of many countries. In this sense, the guidelines and explanations given by the TAs about the interpretation of these concepts should be relevant for both the domestic GAAR and the PPT.[9]
  - The PPT is a treaty-based GAAR and, as such, its implementation presents similar challenges as the implementation of a domestic GAAR in terms of capacity building for the TA officials who interpret and apply it, the development of internal procedures, communication mechanisms, transparency, and procedures for dispute resolution.

    The 'GAAR Toolkit' and Sections 2.3, 4.2 and 5.2 of this document refer to the factors that TAs are recommended to consider addressing the aforementioned challenges, while outlining some good practices of countries on the subject. For the implementation of the PPT, It is recommended that TAs refer to the same procedures and practices that are adopted for the application of the domestic GAAR, in order to avoid duplication and possible conflicts.
- Challenges related **to the treaty-based nature of the PPT**:
  - The specialized nature of the DTCs may require the participation of officials with in-depth knowledge in the processes related to the implementation of the PPT, not only in international taxation, but with DTCs in particular. In fact, it might be convenient to link officials who had participated in the negotiation of the DTCs under consideration to the process. due to the greater knowledge that such officials may have about the object and purpose of the provisions of the DTCs that grant the benefits intended to be denied as a result of the implementation of the PPT.

    The linking of these officials to the processes, the duties, and responsibilities (in terms of confidentiality, for example) and the stage of the process in which they should be linked are some of the issues to be considered.
  - **Formation and participation of a GAAR Committee or expert panel:** In many countries, decisions regarding the domestic GAAR are made, consulted, or reviewed by a GAAR Committee or another collegiate body. Countries must decide whether a similar committee should be formed specifically for the PPT or if the existing domestic GAAR Committee should also handle the PPT implementation.
  - Application of the MAP procedure to matters involving the application of the PPT. The aspects related to this challenge are discussed in more detail in Section 2.6.

[9] In this regard, it is worth bearing in mind that the Comments to the OECD and UN Model Conventions also include some guides or explanations about some of these concepts.

Examples of PPT adoption in CIAT member countries:

- **Brazil** includes anti-avoidance provisions in DTCs with Bahrain and Ecuador that deny benefits if the main purpose of the creation or attribution of a right were to obtain treaty advantages. Similar clauses are also mentioned in the treaty with Mexico, stating that the provisions of the article do not apply if the main purpose is to take advantage of them.
- **Chile** has incorporated the PPT into several of its conventions through the subscription and ratification of the MLI, following the Article 29(9) model of the OECD 2017 Convention. Among the countries whose treaties were impacted by MLI are Australia, Austria, Belgium, Canada, Croatia, Czech Republic, Denmark, France, Korea, Ireland, Malaysia, Mexico, New Zealand, Norway, Poland, Portugal, Russia, South Africa, Spain, Thailand, and the United Kingdom. Chile has also signed an amending Protocol to add a PPT standard in its DTC with Brazil, although it is not yet in force.
- **Colombia** features specific anti-avoidance clauses in its treaties with Canada and Portugal. These clauses establish that the benefits of the convention will not apply if the purpose, or one of the main purposes, of the creation or attribution of a right was to obtain such benefits. In the case of the treaty with Portugal, provision is made for mutual consultation between competent authorities if the application of the provisions results in unforeseen results.
- **Ecuador:** Ecuador's DTC with Japan includes a clause similar to the PPT, which denies benefits if 'obtaining that benefit was one of the main purposes of any agreement or transaction.'
- **Mexico** has incorporated the PPT into its treaties with Argentina, Germany, the Philippines, and Spain, based on Article 29, paragraph 9 of the OECD Model. Other treaties with Bahrain, Brazil and Ecuador include provisions that deny benefits when the main purpose of the operation was to take advantage of the treaty. Many other treaties (with Australia, Austria, Belgium, Canada, Chile, Denmark, Finland, France, Greece, Hong Kong, Hungary, India, Indonesia, Ireland, Italy, Japan, Korea, Lithuania, Luxembourg, Malta, Netherlands, Norway, Peru, Poland, Portugal, Qatar, Romania, Russia, Singapore, Sweden, Switzerland, Ukraine, and the United Kingdom) are impacted by Article 7(1) of the MLI.
- **Panama** has adopted the **MLI PPT** in some of its treaties, such as the one with Barbados.
- **Peru** also includes **Treaty GAARs** in its DTCs, with Brazil and Japan, which refer to the 'main purpose'. The DTC with Mexico also contains anti-avoidance clauses for dividends, interest, and royalties if the main purpose were to obtain advantages. The DTC with Portugal also features a **GAAR clause** referring to the 'main purpose'.
- **Uruguay** has reported a Limitation on Benefits (LOB) clause in its the DTC with Ecuador. It has also applied a clause of the Main Purpose Test (PPT) in its DTC with Spain.

Many countries have adopted this clause through the Multilateral Instrument (MLI) in 2017 or subsequent years, which modifies bilateral tax treaties upon ratification by both parties. Recently, the parliaments of Argentina and Peru approved the accession to MLI.

2.6 Procedure for the resolution of disputes arising from GAARs within the framework of a tax treaty.

Access to the Mutual Agreement Procedure (MAP):

Both the **BEPS Action 14** standard, and the Commentaries to Article 25 of the Model Conventions require that cases involving the application of a domestic GAAR or a PPT can always be submitted to a MAP, provided that the application of such rules may result in 'taxation that is not in accordance with the provisions of the DTC'. The Commentaries clarify that this last expression refers not exclusively to cases of double taxation.

The **BEPS Action 14 Final Report** recommends granting taxpayers access to the MAP both in cases where a tax authority has invoked a PPT to deny treaty benefits and in those where a domestic GAAR has been applied that may result in taxation 'not in accordance with the provisions of the Convention[10]

However, it stresses that granting of access to the MAP does not imply that the **Competent Authorities** in the DTC have the obligation to resolve the MAP in general, or, in particular, any case of double taxation resulting from the application of the national GAAR or the PPT, as the case may be. Indeed, as in all MAP cases, the obligation of the competent authorities is one of 'best efforts' rather than result, in the sense that they must 'endeavor (...) to resolve the case.'[11]

Implementation challenges:

Access to the MAP in cases of denial of DTC benefits through a domestic GAAR or the PPT, as the case may be, can generate challenges in terms of coordination with the domestic administrative procedures. An example occurs in countries where a GAAR Committee must be involved in the application of the domestic GAAR or the PPT, as the case may be. These countries should coordinate the existence and functioning of such a Committee with the MAP, considering the requirements of BEPS Action 14 (in element 2.6 of the minimum standard) and in the Model Commentaries. Under the latter, the decision of a GAAR Committee should not in principle be an impediment to applying to the MAP (except for the exceptions provided for in element 2.6 of the minimum standard of BEPS Action 14, which should be clearly outlined in the MAP guidance countries are recommended to publish).

[10] Article 25(1) of the OECD and UN Model Conventions.

[11] Article 25, paragraph 2 of the OECD and UN Model Conventions.

Transparency and Guidance:

It is crucial to provide information to taxpayers on the mechanisms for accessing the MAP. As mentioned in the previous point, this information should also refer to the possibility of accessing the MAP when the TA applies a domestic GAAR or the PPT, to deny or ignore the benefits of a DTC.

Several countries already provide this guidance:

- **Panama:** The DGI of Panama publishes information on the mechanisms of MAP on its website. This information is not limited only to cases related to the GAAR but covers all the provisions of the DTC.
- **Uruguay:** The DGI of Uruguay also has a guide on its website that guides taxpayers on how to initiate an amicable procedure within the framework of the DTCs This procedure is accessible for cases where GAAR are applied.
- **Chile:** The SII provides instructions through Circular No. 13 of 2022, amended by No. 19 of 2023. These circulars regulate the mutual agreement procedure, which can be invoked by a resident taxpayer who considers that the tax measures adopted by one or both Contracting States result in taxation not in accordance with the convention.
- **Mexico:** Mexico's 'Guide on Mutual Agreement Procedures' (*Guía sobre Procedimientos Amistosos*) explicitly states that the application of an anti-avoidance rule may be the subject of such procedures.
- **Peru:** The web portal of the SUNAT of Peru also disseminates information about the Mutual Agreement Procedure (PAM). This guide, available in English and Spanish, establishes the rules, guidelines, and procedures for accessing and using the MAP, in accordance with the BEPS Action 14 minimum standard, seeking to provide clarity, certainty and transparency.

Capacity-building of the Courts:

Given the complexity of GAAR cases, it is expected that, especially at the initial stage of their introduction, many cases will be the subject of litigation. Therefore, it is important to include judges in the capacity-building efforts, presenting them with the proposal and the final content of the GAAR and offering them workshops to familiarize them with the underlying logic and the interaction with other doctrines. An effective and independent dispute resolution procedure is crucial, as applying the GAAR is a complex task and errors can occur.

In summary, the application of the GAAR in an international context is a constantly evolving area. It generates additional challenges for the TAs, with debates on the primacy of the rules and the treaty interpretation, highlighting the importance of training, transparency, and the dispute resolution mechanisms to ensure **legal certainty** and consistent application of both domestic and treaty-based GAARS.

3 Analysis of the cases provided by the tax administrations

The assessment of **tax avoidance risk** is essential both to decide on the need for a GAAR and to identify the cases in which it could be applied. This assessment is an ongoing exercise that can inform audit activities and help to identify cases that could be subject to the application of the GAAR. The risk assessment is structured in three main and interrelated areas: knowledge of avoidance behavior or regimes, aggregate indicators on the behavior of taxpayers, and legal analysis or monitoring of incentives.

GAARs are particularly useful for new types of avoidance for which SAARs do not yet exist. To identify these schemes, TAs can draw on experiences from other countries, analyze judicial rulings, review descriptions published by other administrations or utilize **mandatory or voluntary disclosure rules**. Even in the absence of disclosure rules' **'hallmarks'** of avoidance structures can be used as risk indicators. These include significant losses, transactions with low-tax or non-transparent jurisdictions, important discrepancies between financial and tax accounting, operations designed to access a more favorable treaty or rule (known as *treaty shopping*), or **related party transactions**. However, none of these characteristics by themselves prove avoidance, but are indicators of risk.

Aggregate indicators involve the use of data such as **Foreign Direct Investment (FDI)** statistics or **Country-by-Country Report (CbCr)** data. Finally, the **legal analysis of incentives** evaluates the risks inherent in the domestic tax system itself, where complexity or disparate tax treatment for economically similar situations may create opportunities for avoidance. This analysis also examines risks within the country's **tax treaty network**, identifying which treaties are most vulnerable to **treaty shopping**. The combination of these three risk assessment methods facilitates the efficient allocation of **audit capacity**.

3.1 Cases involving the application of domestic GAARs.

According to the reports from participating TAs, the detected schemes challenged under domestic GAARs include the use of **conduit companies or shell companies** lacking economic substance, which function as intermediaries to divert tax benefits, as well as the creation and liquidation of companies by the same partners to evade controls and inflate deductions. Operations have also been observed, involving the improper application of discounts or the unjustified deduction of expenses that have no direct relation to taxable income, seeking to artificially reduce the **tax bas**e.

Other schemes involve leasing real estate to related parties at inflated values to generate higher deductible expenses or conducting step transactions (structured in sequence) with the sole intention of transferring profits with minimal tax impact. In essence, these schemes are characterized by a dissonance between the legal form and the economic reality or the underlying purpose of the transaction, seeking a 'camouflage or manipulation' to avoid the generation of the tax liability.

The taxes most frequently affected by these tax avoidance schemes are the Corporate Income Tax (IRPJ/ Income Tax) and the **Social Contribution on Net Profit** (CSLL), given their significance in revenue collection and the complexity of underlying business operations. However, schemes can also impact on other taxes such as **Value Added Tax (VAT)** or Sales Tax, through the improper application of discounts.

To detect these avoidance schemes, TAs employ a combination of methods and tools. Gathering intelligence about avoidance behaviors is essential. This involves studying international precedents, analyzing reports from organizations (such as CIAT, OECD, and the UN), participating in information exchanges programs with other tax authorities, and using disclosure rules (mandatory or voluntary). Likewise, the '**hallmarks**' of avoidance structures, such as significant losses or transactions with low-tax jurisdictions, are systematically analyzed.

TAs have implemented sophisticated procedures, including the clear assignment of responsibilities, the elaboration of evaluation flowcharts, the maintenance of internal **GAAR cases databases**, and the use of **collegiate bodies** or expert panels for decision-making. These strategies and tools, such as the '**business purpose test**' used in Brazil, alongside data cross-referencing and specialized audits, are vital to identify, analyze and combat complex tax avoidance structures.

The following table summarizes selected cases reported by the TAs in the region:

Country	Observed scheme	Taxes affected	Detection and analysis mechanism for applying GAAR
Argentina	An Argentine local company entered into contracts to receive services (management, back office, IT, etc.) from its related parties abroad. The audit determined that several of these services did not add value to the local operation, so their deductibility was challenged.	Corporate income tax (CIT)	Analysis of economic group data provided by the taxpayer, along with public information sourced online. Review of supporting documentation and internal records provided by the company. Economic and financial indices and indicators were utilized. Inconsistencies were found regarding the functions performed by the local company. The following **hallmarks** were observed: mismatched documentation dates, a lack of commercial necessity or tangible benefit from the outbound service payments, and exponential growth in service fees during a specific period following the acquisition of the company by a new economic group.
	Transfer of shares to offshore trusts, while maintaining control over the assets. Scheme purpose: reducing the tax base or avoiding taxes on assets and dividend distributions	Personal Property Tax and Income Tax.	Information from the tax returns and the information regimes on social shares. The country's Supreme Court confirmed the determination.
Bolivia	A Company, though formally incorporated, lacked capacity to conduct economic activity. Between 2021 and 2023, it issued 744 invoices for a total amount of 6,010,076,790 Bolivianos. The scheme showed considerable sales versus insignificant purchases, which is atypical for a genuine business. This allowed for the misappropriation of tax credits and deductions by in favor of taxpayers named data were on the invoices[12].	VAT and Corporate Income Tax (IUE).	Massive **data cross-referencing** from corporate databases and the **National Taxpayer Registry** (National Tax Service – SIN). consultations to the National Register of Taxpayers, Plurinational Trade Registry Service (SEPREC), and Ministries of Rural Development, Labor, Employment and Welfare, The tools included the analysis of the issuance of invoices, tax compliance, banking links, and business affiliations to identify non-existent operations.
Brazil	Reorganization and other operations structured in sequence which, although formally valid, hid the taxable event and lacked a real economic or financial motivation, aiming to omit capital gains from the sale of shares.	Income Tax and Social Contribution.	The commercial purpose test was used to identify transactions lacking economic or financial motivation The detection was based on the analysis of reorganization operations and structures in sequence that appeared to be valid but hid the taxable event.

[12] It should be clarified that this case reported by the tax administration could qualify as evasion and not avoidance in the sense of what the GAARs rules are intended to attack.

Country	Observed scheme	Taxes affected	Detection and analysis mechanism for applying GAAR
	The operation involved the alienation of shares of an S.A. by from legal entity to its majority shareholder shortly before the initial public offering (IPO) of those shares. The sole purpose of this alienation was to reduce the incidence of taxes and contributions that the legal entity would have had to pay if it had participated directly in the IPO. This was considered an 'abuse of Law.' The operation generated an 'abusive tax gain' of approximately 19 million reais.	IRPJ, Additional, CSLL, PIS, COFINS.	It was determined that the alienation promise was made for the 'only credible reason' of reducing taxes. The 'commercial purpose test' was applied to disregard the intermediary acts and attribute the capital gain to the Brokerage Souza Barros, as if they themselves had participated directly in the IPO alienations.
Chile	Intra-group financing structures by interposing a foreign financial institution. This allowed interest payments to that entity to be taxed at reduced rates (4% instead of the general 35%), despite the intermediary lacking economic substance or actual control over the credit flows.	Additional Tax (withholding tax).	Analysis of corporate, financial, and economic information of the taxpayer and his business group. Review of corporate restructurings. Identification of the relationships between the participants in the scheme (ownership, commercial, etc.). Analysis of contractual clauses. Monitoring of credit flows. In addition, specific tools were used to identify the risks, such as: **Internal information crossings**. Risk profiles sheets. Corporate networks. Consultations with regulators. Exchanges of information (EOI) on request. Crosses of internal information, risk sheets, and family and corporate meshes.
	Equity dilution of an family leader in favor of their children, materializing through business reorganizations without valid economic or legal reasons, with the main purpose of avoiding inheritance and gift taxes.	Tax inheritance, Donations and Complementary Global Tax.	Analysis of the corporate, financial, and economic information of the taxpayer and his business group. Identification of the relationships (family, patrimonial) and patrimonial changes between the participants in the scheme. The absence of economic or legal reasons to justify the decision was a key factor.

Country	Observed scheme	Taxes affected	Detection and analysis mechanism for applying GAAR
Colombia	Fragmentation of a franchise agreement into several contracts (franchise, commode, and usufruct) without commercial benefit, in order to declare usufruct income as not taxed with VAT.	VAT	Exogenous information, tax returns, accounting records, and affidavits. Crossing of internal information. The detection was based on the identification of artificial legal acts or businesses with no economic purpose, correct appearance that concealed the true will of the parties and high tax benefits. There was evidence of an unreasonable economic execution, the obtaining of a disproportionate tax benefit and a legal structure that concealed the true intention.
	Creation and liquidation of companies by the same partners to evade control and raise deductions through block transfers of assets between companies of the same group before final marketing.	Income tax	Exogenous information. Tax returns. Accounting records. Sworn statements. Tools used to identify the risks, mainly, the crossing of internal information was used. The main elements that justified the application of the GAAR: Artificial legal acts were determined without economic purpose; the acts were apparently correct, but they concealed the true will of the parties; they showed high tax benefits; the underlying purpose of these operations was to transfer assets in bulk to avoid paying taxes.
Ecuador	A taxpayer in the oil sector made interest payments to his parent company for a loan. The Tax Administration he considered this operation as a figure of undercapitalization, based on an analysis of essence about the form. The purpose was to reduce the local tax base.	Income tax	Loan agreement, accounting information (majors, journal entries, extra countable appendices), and documentation of corporate constitution of the taxpayer. The determination that the loan and interest were part of an undercapitalization strategy with no real economic substance, prioritizing essence over form.

Country	Observed scheme	Taxes affected	Detection and analysis mechanism for applying GAAR
Honduras	Improper application of discounts on telephone sales that were not formally part of the tax base, resulting in a recovery value less than the cost of the goods, avoiding Sales Tax.	Sales tax.	Risk Control Matrix (internal tool) generated control orders. Application of Article 105 of the Tax Code, which establishes that the taxable base must be based on economic reality, normal practices, generally accepted accounting standards and accounting and financial reporting principles. Reference was made to IFRS 15 Revenue (for sales) and IFRS for SMEs (Section 13.20 Inventories, NIC2 Inventories for expenses). Manual of Ex Officio Determinations and Plan of Tax Control Management. The risks identified included the non-collection of ISV on the value-added margin and the recognition of tax credit above the cost of the good. Financial statements, tax returns, accounting records, contracts, general ledger, auxiliaries, inventory control, audit reports, and the 'Office No. SGT-117-2018'.
	Deduction of expenses that had no direct relationship to the accrual of taxable income. This included costs that were not linked to the generation of income from the corresponding tax period or that would generate income in future periods, but that were improperly deducted in the current period.	Income tax.	The main elements that justified the application of the GAAR: the tax rule establishes that deductible expenses for net taxable income are those incurred during the tax period, and each period must be settled independently. However, the company deducted expenses intended to generate future income in the current period; no relationship was found between the expenses incurred and the income generated for the audited period.
Mexico	Company A and Company B entered into a 'purchase of effective flows' agreement, where A agreed to sell flows to B for $110 million in five instalments. Subsequently A merged with B, and B inherited the obligations. The transaction allowed Company A to compensate for accumulated tax losses and reduce taxes, while Company B was able to defer taxes and maximize tax benefits due to a deferred payment structure.	Income tax	The operation was detected due to a tax refund request. The tax authority conducted an analysis of the economic substance of the transaction. The procedure involves the presumption of lack of business reason by the tax authority, based on facts and circumstances known to the taxpayer and the valuation of elements, information and documentation obtained during the verification faculties.

Country	Observed scheme	Taxes affected	Detection and analysis mechanism for applying GAAR
Peru	Specifically, a shareholder (B) and his spouse sold real estate to his The transaction allowed Company A to amortize accumulated tax losses and reduce taxes, while Company B was able to defer taxes and maximize tax benefits due to a deferred payment structure.	Income tax	Analysis of the taxpayer's informative returns and programming control. Information requirements to the taxpayer and analysis of accounting documentation. SUNAT assessed whether the acts were artificial or improper and if they generated legal or economic effects other than tax savings similar to those of usual acts. This case was one of the 10 resolved under the XVI Rule until 2022, of which the rule was applied in 3.
Uruguay	Application of the principle of economic reality in contracts of a Free Zone with users. A specific case involved a Free Zone operator with service provision and lease contracts with two users who formed an economic group, where 'fraud to the law' was identified due to the inadequacy of the legal form to reality.	Corporate taxes related to the Free Zone activity and the Income Tax on Industry and Commerce.	The case is applied within the general administrative procedure, where prior notice for discharges is granted. The provision of Article 6 of the Tax Code enables the interpreter to attribute to situations and acts a meaning in accordance with the facts, regardless of legal forms that do not adapt to economic reality. The disregard is based on a detailed analysis of the constituent elements of legal acts or businesses.

3.2 Cases involving the application of domestic GAARs or included in international agreements.

The schemes detected in this international field share patterns, such as the use of vehicle companies or conduit companies without economic substance in jurisdictions with low or no taxation, which function as intermediaries to divert tax benefits, such as royalties or interest. Other schemes include artificial acts in the contractual structure and the use of shell companies or the creation of fictitious companies to divert income, as well as the exploitation of atypical legal transactions (franchises, gratuitous loans, usufruct) with gratuitous agreements that are essentially onerous in order to obtain undue tax advantages. Complex corporate reorganizations, changes in equity without effective taxation, circular transactions, and strategic mergers or liquidations have also been observed, with the main purpose of obtaining benefits from a DTA or reducing the tax burden in an international context. The key concept in these cases is the 'Primary Purpose Test' (PPT), which denies the benefits of an agreement if the main objective of the structure or transaction were to obtain a tax advantage.

The taxes affected by these schemes are diverse, including Income Tax, withholding taxes on cross-border payments. In essence, the reduction of the overall tax burden or the improper use of tax benefits granted by treaties is sought For the detection of these schemes, tax administrations use a combination of mechanisms and tools. These include internal information crossings and information

exchanges with other tax administrations. A thorough analysis is conducted of tax returns, accounting records, and supporting documentation such as contracts, accounting entries, amortization tables, and financial statements. The information of the economic group, including master reports, and public information obtained from the internet are also vital. In addition, economic/financial indices and indicators, profit test, and the review of official records of the jurisdictions involved are used. The information requirements to the taxpayer and to local third parties and foreigners, together with the financial analysis of the company, are fundamental to determine whether the formal appearance of the transaction corresponds to its real economic substance and whether there is an avoidance goal.

Below is a table summarizing the cases reported by the countries that involve the application of GAARs in the framework of Tax Conventions.

Country	Observed scheme	Taxes affected	Detection and analysis mechanism for applying GAAR
Argentina	An Argentine company paid royalties for brand use and interest on loans to a related company located in the Netherlands. This Dutch entity was identified as a 'conduit' society with no economic substance and no structure or decision control. The real 'beneficial owner' was the Mexican parent company, which owned the intellectual property. At that time, there was no DTC between Argentina and Mexico, but there was one between Argentina and the Netherlands.	Income Tax and Withholdings to Beneficiaries from Abroad.	Crossovers of internal information. Economic/financial indices and indicators. Profit Test. Information from the economic group. Supporting documentation. Internal records of AFIP. Public information obtained from the Internet. Information through exchanges with other tax administrations. Master report of the group. Relationship between income tax paid and income. Official records of the jurisdictions involved. Key Elements for the Implementation of the GAAR: The company in the Netherlands lacked economic substance and structure. They did not have the effective control of decisions (the directors signed both contracts simultaneously, and the intellectual property belonged to the Mexican entity).
Ecuador	Payments to a company in a low or zero tax jurisdiction for the acquisition of construction and assembly services that should have been subject to withholding, with the main purpose of obtaining benefits from the DTC.	Withholding taxes.	Review of the income tax return of the major accountants vs. reports of the taxpayer. Analysis of the supporting documents (contract, accounting entries, amortization tables, means of payment, financial statements). Financial analysis of the company. Convention with Japan and Protocols with China, which contain references to the 'main purpose'.

Country	Observed scheme	Taxes affected	Detection and analysis mechanism for applying GAAR
Uruguay	Denial of benefits of a DTC (with Spain) because the Administration understood that the main purpose of the creation of the Uruguayan society was to take advantage of the agreement. Identification of shareholders of a society (in the engineering sector and construction) in order to determine at the source of the application of a clause of benefit limitation tax (LOB) on an Income DTC with Ecuador.	Withholding at the source of income tax.	Information of the company involved from the DGI database. Information on holders of equity interests in the company. The Ecuadorian tax authority notified the DGI of Uruguay about the application of a Uruguayan company for the return of Income Tax withholdings in Ecuador, arguing that the Uruguayan company did not comply with the requirements of the LOB clause of the DTC (e.g., not being a government entity, not listed on the stock exchange, or having at least 50% of its shares directly or indirectly in the hands of shareholders resident in Uruguay or Ecuador). Therefore, Ecuador considered that the company was not entitled to the benefits of the DTCs.

4 Challenges in the design and application of GAARs

4.1 Challenges in the design of GAARs

Designing a GAAR is a complex task since its validity and effectiveness largely depend on its formulation. There is no international consensus on an 'ideal' design, and each country must adapt its GAAR to its own legal and socio-economic reality.

In this regard, the key challenges in design include:

- Ambiguities in the definition of key elements of the GAAR and their consequences.
- Uncertainty regarding the interaction between GAARs and SAARs.

4.2 Challenges in the application of GAARs

The effective application of the GAARs in practice implies overcoming important barriers related to the capacity of TAs, information asymmetry and the need for transparent communication and dispute resolution.

The main challenges in terms of implementation are:

- Lack of institutional capacity and qualified human resources.
- Information asymmetry for the detection of abusive schemes:
- Risk of discretionary power in the application.
- Lack of transparency towards taxpayers.
- High rates of litigation.
- Difficulties in the application of domestic GAARs and Treaty GAARs to international operations.

5 Recommendations for Latin American countries

The success of a GAAR in Latin America will depend on careful design, effective and transparent implementation, and a constant commitment to strengthening institutional capacities. It is crucial to take meticulous care of every stage, from **risk assessment** to practical management.

5.1 Regulatory design

The design of a GAAR should be flexible and adapted to the particularities of each jurisdiction, avoiding the literal adoption of external models.

Adaptation to the national legal, institutional, and socio-economic reality:

- There is no 'ideal' design of GAAR; each country must consider its legal tradition, constitutional limitations, and tax policy and management.
- **Comparative experience** is valuable. Argentina pioneered the region in 1946, taking inspiration from the German model of 1919, while Brazil adopted a model similar to the French one in 2001. Countries such as Chile (2014) and Mexico (2020) have benefitted from incorporating the GAAR more recently, learning from international experience and the developments of the **BEPS Action Plan**.

Clarity in the definition of key elements:

- It is essential to accurately define concepts such as 'tax avoidance scheme, arrangement or transaction', 'tax benefit or advantage', and 'subjective and objective evidence'. Ambiguity can lead to uncertainty and complicates implementation.

Interaction with SAARs:

- Clearly establish whether the GAAR functions as a **provision of last resort** (applicable only if no SAAR applies) or as a **complementary tool**. Chile, for instance, mandates that SAARs prevail when applicable, though it allows for complementary application in specific cases.

Consistency between the domestic GAAR and treaty GAAR:

- Consistence between the domestic GAAR and the GAAR treaty is advisable for both conceptual and practical reasons.

Clarity in the consequences:

- The consequences of the application of the GAAR, such as the recharacterization or reconfiguration of the operation or piercing the corporate veil, must be clearly defined in the statute. Specific penalties and sanctions should also be established.

5.2 In the application of the regulation

The effectiveness of a GAAR lies not only in its design, but fundamentally in its practical application, which requires robust institutional capabilities and processes.

Strengthening institutional capacity:

- Consider a mechanism for incorporating staff and succession planning, which ensure business continuity. (e.g., ensuring a qualified replacement is ready when a key official departs).
- Coordinate efforts in the development of capacities for revenue agents (inspectors, tax attorneys, data analysts, sector specialists) as well as for the tax courts. Countries such as Chile, Honduras, Mexico, and Peru have already implemented continuous training programs.

Clear and transparent internal procedures, and thresholds.

- TAs must implement detailed internal procedures for the application of the GAAR. This includes the assignment of responsibilities, the elaboration of flowcharts, and the maintenance of internal cases databases (whether public or restricted) to ensure consistency and learning. Chile, Colombia, Mexico and Peru, for example, have established special procedures, including in some cases the intervention of collegiate bodies.
- Considering the implementation of monetary thresholds for the application of the GAAR can help to focus resources on material cases and reduce administrative costs. Mexico has established a threshold for certain reportable schemes.

Effective communication and transparency:

- Proactive communication is vital to build certainty and trust. This includes publishing general guidelines and explanations in plain language, as well as conducting awareness campaigns.
- The publication of non-exhaustive hallmarks or lists of avoidance schemes (such as the Catalog of Tax Schemes in Chile and Peru) provide guidance to taxpayers without limiting the action of the authority's power to act. Panama publishes its TAT resolutions.

Create Advisory/Approval Panels and Committees:

- The creation of committees or panels (such as the Executive Committee in Chile, the Review Committee in Peru or the Collegiate Body in Mexico) can guarantee a coherent and more legal certainty, mitigating arbitrary measures. In Mexico, the opinion of the Collegiate Body is binding on the tax authority prior to certain enforcement acts.

Implementation of mandatory disclosure rules (MDR):

- Requiring taxpayers (and/or tax advisors) to report on **aggressive tax planning schemes** (following the recommendations of BEPS Action 12) is an important tool to reduce **information asymmetry**. Argentina (RICOI) and Mexico (Reportable Schemes) are key examples, while Brazil and Colombia have faced challenges in implementing similar regimes.

Litigation management and dispute resolution:

- Effective dispute resolution mechanisms, including access to the Mutual Agreement Procedure (MAP) for GAARs cases in the context of tax treaties.

Interaction with DTCs:

- To prevent treaty abuse, the inclusion of GAAR clauses – such as the **Principal Purpose Test (PPT)** from the 2017 OECD/UN Models—is vital, whether through bilateral negotiation or the Multilateral Instrument (MLI).
- As far as possible, countries should adopt the same procedures and practices for the PPT as they do for the application of domestic GAARs and other DTC GAARS, in order to avoid duplication and possible conflicts.
- The specialized nature of the DTCs may require the participation of officials with in-depth knowledge in the processes related to the implementation of the PPT, not only in international taxation, but with DTCs in particular. It might be advisable to involve the original treaty negotiators, given their greater knowledge of the object and purpose of the DTC provisions that grant the benefits that are challenged as a result of the application of the PPT. The linking of these officials to the processes, the duties, and responsibilities (in terms of confidentiality, for example) are some of the issues to be considered.
- Formation and participation of a GAAR Committee or panel of experts. In many countries decisions regarding the application of the domestic GAAR are taken, consulted, or reviewed by a GAAR Committee or some other form of special collegiate body. Among the decisions that countries must take in relation to the implementation of the PPT is whether a committee

similar to the GAAR Committee should also be formed for its implementation or, in the case of those countries that already have a GAAR Committee for the purposes of implementing the domestic GAAR, whether the same Committee will be involved in the implementation of the PPT.

In summary, the implementation of GAARs requires a **holistic vision** that integrates legislation, administrative capacity, communication, international cooperation, and a solid judicial infrastructure, The ultimate goal is a balance between combating avoidance and respecting the legitimate tax planning.

Next, and without intending to cover all aspects, the following table presents some operational recommendations:

Key areas	Some issues identified	Operational recommendations	Implementation features	Expected benefits
Normative design	Ambiguity in definitions of elusive or abusive acts that are to be targeted and their consequences.	Include clear and precise definitions of artificial act, simulation, tax advantage, and business purpose in the law. Clearly outline the consequences of the GAAR application.	Use a glossary in the tax code or regulation; provide for possible clause of limited interpretation -via regulation. Specify the effects of recharacterization and the sanctioning regime (if applicable).	Greater legal certainty for auditors, taxpayers, oversight committees and the judiciary.
	Lack of clarity regarding the justification and spirit of the rule.	Accompany any GAAR legislative proposal with a technical document or explanatory memorandum (Explanatory Statement, *White Paper*).	The memorandum should include economic justification, identified risks, comparative models that served as inspiration and examples of application assumptions.	Clarity in the interpretation and understanding of the rule and its rationale.
	Lack of clear relationship between GAAR and SAAR.	Expressly establish whether the *lex specialis* principle applies (SAAR over GAAR) or if they are complementarity tools.	Insert a specific article; differentiate between isolated acts and complex operations (GAAR) (Chilean Model);	Minimizing interpretative disputes and increase legal predictability.

Key areas	Some issues identified	Operational recommendations	Implementation features	Expected benefits
Internal application procedures	Discretionary application	Create review committees or panels with prior rulings and defined deadlines.	Integrate officials from different relevant areas; establish internal regulations; define a deadline. Adopt templates of requirement to taxpayers that include observed facts, indications of artificiality, explanation of the improper tax benefit and objective evidence used. Committee 'Rating Report' template with mandatory fields (applicable standard, facts, decision, votes for/against).	Greater objectivity and reduction of administrative arbitrariness.
Transparency and legal certainty	Lack of clear guidelines for taxpayers.	To establish binding consultations and publish catalogues of risk schemes.	Simplified procedure and short deadlines for responses to queries. To publish clear catalogues, updated annually and of public access.	Transparency, preventive deterrence, and greater legal certainty.
	There is little transparency in the management of GAAR.	Publish aggregated annual reports with application statistics.	Include number of cases, amounts in dispute, court outcomes, dissemination via the web.	To strengthen public trust and democratic control.

Key areas	Some issues identified	Operational recommendations	Implementation features	Expected benefits
Capacity and technology management	Limited technical capabilities.	To create specialized **GAAR training programs** for auditors and judges.	To design modules in comparative law, advanced accounting, and data analysis; to promote international exchanges with experienced jurisdictions	Improvement in the **technical quality** of decisions.
	Difficulty in detecting complex schemes.	Using **AI and data mining** to identify operations without substance (e.g., shell company chains with no real activity, circular transactions, artificial deferrals).	Integrate mercantile, customs, banking data; build predictive risk models; expert human validation. Implement GAAR risk models that generate alerts about unusual declarations or structures. Maintain internal databases or directories about GAAR cases.	Increase in early detection and reduction of **information asymmetry.**
Judicial management and dispute resolution	**High litigation rates** and protracted legal proceedings	Compile **evidentiary records** in digital files; develop manuals with **standardized legal arguments**; and select **paradigmatic cases** for litigation strategy.	To gather antecedents in digital file; to prepare manual with typical arguments; to select paradigmatic cases.	Stronger **legal defense** in court and the successful establishment of **jurisprudential precedents**.
	Absence of alternative dispute resolution mechanism.	Establish tax mediation or advance settlement agreements.	Regulate advance settlement procedures; deadlines and conditions; judicial control for legal certainty.	Reduce procedural costs and provide early legal certainty.
Monitoring and evaluation	Lack of periodic evaluation.	Measure performance indicators annually and commission external audits of international organizations.	Indicators: number of cases, amounts, % success, times; review of international organizations or comptrollers; publication of results.	Continuous improvement and alignment with international standards.

6 References

Anguita Oyarzún, C. F. (2017). *Los retos en la aplicación de las cláusulas antiabuso por las Administraciones Tributarias Latinoamericanas y las lecciones de la experiencia española y europea* (VII Beca de Investigación CIAT/AEAT/IEF). Inter-American Center of tax administrations https:// www.ciat.org/Biblioteca/BecadeInvestigacion/2017_VII_retos_aplicacion_clausulas_antiabuso_anguita_chile.pdf

Inter-American Center of tax administrations (2022). *Manual on the control of international tax planning*. CIAT https://biblioteca.ciat.org/opac/book/5811

Inter-American Center of tax administrations (2022*). Toolkit for the design and effective implementation of general national and international anti-abuse rules.* CIAT https:// biblioteca.ciat.org/opac/book/5803

Porporatto, p. (2021, May 10). *Design and Management of General Anti-Avoidance Clauses*. CIAT Blog. https://ciat.org/ciatblog-diseno-y-gestion-de-las-clausulas-generales-antielusivas

Tarsitano, A. (2021*). Tax avoidance: Form and substance in tax law (1st ed.)*. Editorial Astrea. United Nations. (2019). *United Nations Practical Portfolio: Protecting the Tax Base of Developing*

Countries through the Use of General Anti-Avoidance Rules (GAAR). Department of Economic and Social Affairs, Financing for Development Office. https://financing.desa.un.org/sites/default/files/2023-03/GAAR_Portfolio_EN.pdf

Waerzeggers, C., & Hillier, C. (2016). *Introducing a general anti-avoidance rule (GAAR): Ensuring that a GAAR achieves its purpose* (Tax Law Technical Note No. 2016/1). International Monetary Fund, Legal Department.

Annexes

Table I: The GAARs in Latin America: current regulations, year of adoption and source of inspiration.

Country	Normative framework	Year of adoption of the GAAR	Source of informed inspiration
Argentina	Law 11.683, Article 2.	1946	German anti-avoidance legislation of 1919.
Bolivia.	Law No. 2492, Article 8.	2003	
Brazil	National Fiscal Code (Law N° 5172 of 10/25/1966). Article 116, single paragraph.	2001	
Chile	Tax Code, Articles 4° bis, 4° ter, 4° quater, 4°quinquies, 26a, 100a, 119 and160 bis.	2014	Germany, Australia, Spain, France, and the United Kingdom to provide thetax administration of attributions that it did not have before, to requalify.
Colombia	Tax Statute, Articles 869 and 869-1 and -2.	2012 (mod. in 2016)	Local practice
Ecuador	Tax Code, Article 17.	1975	
Guatemala	No existing GAAR		
Honduras	Decree 170-2016, Article 105.	2016	Spanish Tax Code.
Mexico	Article 5-A of the CFF.	2020	Comparative law combined with the analysis of the BEPS plan (PPT rule)
Panama	Article 20 of the Tax Procedure Code.	2019 (validity extended until June 2024)	
Peru	T.U.O of the Tax Code approved by Supreme Decree, Rule XVI of the Preliminary Title (paragraphs 2-5).	2012 (suspended until2019)	Article 15 of the Spanish General Law of 2003 and Article 11 of the CIAT Model Tax Code of 2006. Local practices, such as the exception of the final inspection period) and for the applicable violations.
Uruguay	Decree-Law N° 14306 (Tax Code), Article 6° (second subparagraph).	1974	Article 8 (partially) of the CTAL Model (1970).

Table II: Some particularities of the GAARs in force in Latin American countries.

Country	Thresholds were set	Does it indicate consequences of its application?	Sanctions regime?	GAAR/SAARs interaction
Argentina	No	To dispense with the legal forms or structures that are not manifestly those offered or authorized by private law and to apply those most appropriate to the real intention.	There are no specific sanctions.	
Bolivia	No	Manifestly inappropriate forms are dispensed with. The simulated business will be irrelevant for tax purposes, considering the facts actually performed.	There are no specific sanctions.	
Brazil	No	To dispense with the acts or business to hide the taxable facts or their elements.	No specific sanctions are mentioned.	
Chile	Reduction of the taxable base equal to or greater than 1,000 UTM, or if a benefit or scheme has been accessed special tax, or tax refunds have been obtained through abuse of legal forms.	Generation of taxable events in case of abuse of legal forms The taxes they will be applied to the facts actually conducted by the parties, regardless of the simulated acts or business.	Chile: sanctions are established for third parties who participate in the planning or design of acts, businesses or contracts classified as abusive or simulated. If the taxpayer fails to identify the third party involved in the control process, the fine will be applied to the taxpayer Additionally, the parties may be jointly and severally liable for the payment of the fine if they violated their management and supervisory duties.	If a special rule to prevent avoidance is applicable, its legal consequences will prevail over those of the GAAR. When a single act or operation is covered by one SAAR, only this rule applies, but in complex operations where SAAR regulates only some acts, while the GAAR can be applied to the entire operation.

Country	Thresholds were set	Does it indicate consequences of its application?	Sanctions regime?	GAAR/SAARs interaction
Colombia	No	Reclassify or reconfigure the operation. Lift the corporate veil (Art. 869-2) of entities that have been used or have participated, by decision of their partners, shareholders, directors, or administrators, in abusive conduct.	Sanctions for 160% of the difference for abuse, under article 869.	**Yes**
Ecuador	No	Ignoring legal forms considering the economic situations or relationships that actually exist between the parties.	Special sanctions not mentioned	
Honduras	No	Determination based on economic reality, normal business practices, and generally accepted accounting standards and rules.	Not mentioned	
Mexico	Internally, thresholds were defined when the amount of direct or indirect tax benefits are high or for issues to report as considered highly important	Acts without business justification will have the corresponding tax effects. Determination of taxes, surcharges, and fines, as well as any applicable criminal liability.	No specific fines mentioned	
Panama	No	The tax consequences applicable to the parties involved shall be those corresponding to the acts that were actually performed.	No specific sanctions mentioned	
Peru	No	The rule that would have applied to the usual or specific acts shall apply.	Spec. Infractions under art.178 of the Tax Code	
Uruguay	**No**	Requalification	Consequences not mentioned	

Table III: Obligation to disclose the planning schemes. Comparison between Argentina and Mexico.

Country	Legal framework and year of implementation	Liable subjects	Operations to report
Argentina	RG 5306/2022 established 'Supplementary Information Regime for International Operations (RICOI)'. Previously, the General Resolution N° 4838/2020 of the controversial Tax Planning Information Regime ('IPF'), stopped by the justice system, was annulled.	Companies and associations, and their derivative firms incorporated in the country: These entities, including those derived from trusts, are obliged to report on international operations. Exceptions: SMEs, human and professional people are not obliged to report under this regime.	With related parties, transactions with related parties, including those that allow the transfer of benefits to jurisdictions with a lower tax burden or that take advantage of tax asymmetries. With subjects in non-cooperating jurisdictions, transactions with entities in jurisdictions considered non-cooperating, low or no taxation, or that may be used to avoid the application of international tax reporting standards (such as the Common Reporting Standard – CRS or FATCA). That may generate undue tax benefits, transactions that may generate an international double non-taxation, which facilitate the transfer of benefits to other jurisdictions, or that involve entities or legal figures without tax personality in the jurisdiction of incorporation. Operations with permanent establishments. Business restructurings, operations that have the effect of falling outside the scope of the international reporting regime 'Country by Country Report.'

Country	Legal framework and year of implementation	Liable subjects	Operations to report
Mexico	In January 2020, the Title VI Single Chapter 'Of the Disclosure of Reportable Schemes' of the Federal Tax Code entered into force.	Tax advisors When they design, market, organize, implement or manage reportable schemes, they must disclose the related information. Taxpayers: When they participate in schemes, they also have an obligation to disclose them.	It is defined as an outline: 'Any plan, project, proposal, advice, instruction or recommendation expressly or tacitly externalized in order to materialize a series of legal acts' A reportable outline should contain 3 essential elements: 1.- Be a scheme, that is, a series of legal acts. 2.- That generates or may generate directly or indirectly the obtaining of a tax benefit in Mexico. 3.- Meet any of the 14 characteristics or categories indicated in art. 199 of the Federal Tax Code, some of these are: - Prevent foreign authorities from exchanging tax or financial information with Mexican tax authorities. - Involve a resident abroad who applies an agreement to avoid double taxation with respect to income that is not taxed in the taxpayer's country or jurisdiction of tax residence or is taxed at a reduced rate. When it involves a hybrid mechanism.

Table IV: Special procedures for applying the GAAR.

Country	Chile	Colombia	Mexico	Peru
Nature	Process that requires declaration of abuse/ simulation by Tax and Customs Court at the request of the TA. The committee is an advisory body to the Director of the SII and its main function is to advise, recommend and propose definitions and lines of action in the application of anti-avoidance standards to particular cases, as well as analyzing the various issues that are submitted to their opinion on the development of Anti-Avoidance Administrative Procedures.	Special procedure for tax abuse.	Procedure required before certain control acts, with intervention of a collegiate body.	Within the final audit procedure, a Committee's prior opinion is required.
Legal and Regulatory Basis	Tax Code – Arts. 4th ter, 4th quater, 4th quinquies, 26a, 100 bis, 119 and 160 bis.	Tax Statute – Art. 869 and art. 869-1. Reg. Resolution 4 of 2020 DIAN.	Fiscal Code of the Federation (CFF) – Art. 5-A.	Tax Code – Rule XVI (paragraphs 2º to 5º). T.U.O.: of the Tax Code – Art. 62-C. D.S. 145-2019-EF.
Key steps of the procedure	Inspection process by TA. The TA summons the taxpayer prior to requesting the judicial declaration. Director of the SII requests a statement from the TTA. Minimum amount of tax difference is required. Statement of abuse/ simulation by the TTA.	The officer identifies potential abuse. They issues special summons with reasons and summary proof. Taxpayer responds in 3 months (suspends firmness). Issuance of special request/ prior placement with approval of Directors. Re-characterization/ reconfiguration of the operation is proposed. General procedure and tests are followed.	The tax authority must submit the case to a collegial Body before issuing certain inspection acts (last partial act, official observations, prov. resolution). Taxpayer can express what is convenient for his rights and provide information/doc. The opinion of the Collegiate Body is binding on the tax authority (to apply Art. 5-A.)	Applied in a final audit procedure. Requires prior favorable opinion of a Review Committee. The Supervisory authority submits the report and the file to the Committee. Report notified to the taxpayer. The Committee quotes the audited person to give reasons. The Committee issues a sustained opinion (binding on the supervisory body). Opinion adopted by a majority.

Country	Chile	Colombia	Mexico	Peru
Transparency and public disclosure	Publishes 'Catalogue of Tax Schemes' (annually since 2016). Publishes pronouncements by TA, if they are the result of specific consultations. Failures of the TTA are public.	Does not publish lists of schemes. Does not publish pronouncements of TA.	Does not publish lists of schemes. Does not publish TA rulings. Provides information about access to Mutual Agreement Procedures (MAPs) under treaties.	Publish 'Catalogue of High Schemes Fiscal Risk'). Publishes Annual Report of Management of the Committee Reviewer (statistics without reservation). the database is internal.

Scheme I: Special Procedure for the Application of the GAAR in Colombia (Art. 869-1 E.T.).

Step	Key task	Intervening actors	Relevant details
1	**Identification of potential tax abuse in operation(s)**.	Competent official of the DIAN: control inspectors.	The identification is made within the term of finality of the declaration. The official must show evidence that an operation or series of operations **can** constitute tax abuse, in the terms of Article 869 of the Tax Statute.
2	**Issuance and notification of the Special Summons for Tax abuse**.	Competent official of the DIAN: control inspectors.	The special placement must explain the reasons on which the possible existence of abuse is based, supported by **summary evidence**. The notification it is conducted in accordance with the provisions of Articles 565 and following of the Tax Statute.
3	**Reply of the Special Summons**.	Taxpayer	The taxpayer has a term of **three (3) months** to answer the special summons. During this period, the taxpayer can provide and/or request the evidence that he considers relevant. The term of finalization of the declaration is suspended during these three months.
4	**Obtaining the approval to continue the procedure**.	Official who knows about the investigation/ control, Sectional Director, and Delegate of the Director of Control Management.	This approval of the Sectional Director, and Delegate of the Director of Control Management is a prerequisite before the official issues the Special Injunction or Prior Summons for failure to Declare.
5	**Issuance and notification of the Special Request or Prior Summons for not Declaring**.	Official who is familiar with the investigation / supervision of the DIAN.	It is issued after the expiration of three months to answer the special summons. The notification of this act allows to follow the respective procedure, according to the case, determined in the Tax Statute.
6	**Proposal for reclassification/ reconfiguration and continuation of the audit procedure**.	Official who is familiar with the investigation / supervision of the DIAN.	The Special Request proposes a **re-characterization or reconfiguration** of the operation or operations that constitute tax abuse, according to the evidence collected. This act must contain the description of the facts, acts or omissions that constitute the abusive conduct, the evidence, and the assessment of the evidence presented by the taxpayer. The procedure follows the procedure established in the Statute. The purpose of this procedure is the reconfiguration or re-characterization of operations that constitute or may constitute abuse.

Scheme II: Special Procedure for the Application of the GAAR in Chile (from 2024).

Stage	Performance	Intervenor	Remarks
1. Detection	Identification of potentially elusive operations (abuse or simulation).	SII	Start of the inspection.
2. Internal analysis	Technical study of the case and review by Executive Committee.	SII	Internal committee, their opinion is not binding. It replaces the previous Advisory Committee.
3. Citation	A citation is made explaining the reasons for the possible application of the GAAR.	SII/Taxpayer	Taxpayer can submit disclaimers or antecedents
4. Court order	If the charges are not dismissed, the SII requests the TTA for the declaration of avoidance.	IBS/ATT	Mandatory step before settling/cashing out.
5. Statement of avoidance	A resolution confirming or rejecting the existence of abuse/ simulation.	TTA	Only the TTA can declare avoidance.
6. Settlement and collection	Once the avoidance is declared, the SII liquidates, transfers, and collects taxes.	SII	The transaction is corrected and taxes, interest and penalties are determined.
7. Resources	The taxpayer can appeal the decision of the TTA.	Taxpayer/ Court of Appeals / Supreme Court	Subsequent judicial control.

Table V: Catalogue or list of planning schemes.

Country	Chile	Ecuador	Peru
Name	Catalogue of Tax Schemes.	Practices of Aggressive Tax Planning.	Catalogue of High Tax Risk Schemes.
Age of publication	First published in 2016. It is updated annually.	Not specified.	Published since 2020.
Content	Lists of identified avoidance schemes and schemes that the The Tax administration considers as unacceptable. It is prepared on the basis of the internal law GAAR.	Information about 'Aggressive Tax Planning Practices'.	It contains 24 general characterizations of various nature that may imply a tax breach and where the application of Standard XVI (GAAR) will be evaluated. In one of the schemes (Scheme 13) the existence of sufficient elements to implement the GAAR was established.
Accessibility	Published on the website of the Tax Administration (SII).	Published on the website of the Tax Administration (SRI).	Published on the SUNAT web portal. SUNAT also publishes an annual management report of the Review Committee that refers to this catalog.

Table VI: Committee or panels for the application of GAARs.

Country	Chile	Mexico	Peru
Panel composition	The Executive Committee is a collegiate body whose main function is to analyze the reports prepared by the Department of Anti-avoidance rules that account for the existence of avoidance. Laws N° 21.713 and N° 21.716 (of 2024) improved the anti-avoidance system and replaced the functions of the previous Anti-Avoidance Committee, legally enshrining the existence and decision of a '**Executive Committee**.' Its main role is to analyze reports and recommend to the Director to submit a declaration of abuse or simulation before the TTA, or the application of a SAAR, or establish that there is no avoidance.	It is a **collegiate body** of an approving nature for the purposes of applying Article 5-A of the CFF. It is a requirement that the tax authority submit the case to this body before issuing the final partial report, the official letter of observations, or the provisional resolution.	**Review Committee**, whose opinion is binding on SUNAT's supervisory body.
Legal and regulatory basis	The existence and decision of the Executive Committee was legally established by Law No. 21,713, which replaced the functions of the previous Anti-avoidance committee that were supported by a Resolution. Its functions and existence are regulated in the new article 4th quinquies of the Tax Code. The Committee's composition is established in the new article 3rd quarter of the Decree, Law N° 7 of 1980 (Organic Law of the SII), incorporated by Law N° 21.713. Circular No. 31 regulates these new rules.	Federal Tax Code (Art. 5-A). Body required prior to specific tax audits.	Consolidated Text of the Tax Code (Supreme Decree No. 133-2013-EF), Article 62-C. Superintendency Resolution No. 153-2019/ SUNAT.

Country	Chile	Mexico	Peru
Panel Composition	This new committee is composed of the Director of the Service – who chairs it – and the Deputy Directors of Regulation, Control and Legal Sections	Composed of 3 officials of the Ministry of Finance and Public Credit (SHCP) and 5 officials of the SAT (of specific General Administrations: Tax Legislation, Tax Revenue Policy, Large Taxpayers, Foreign Trade Audit, Legal). It includes Coordinator, Technical Secretary and Pro-Secretary.	Made up of three (3) SUNAT officials appointed as full members and three (3) as alternates. It has a president and a secretary appointed by the National Superintendent.
Requirements for appointing the members	Tax Administration officials who hold the indicated positions.	No specific training or experience requirements are listed in the sources beyond holding the aforementioned positions.	Professional lawyer or accountant, with experience not less than ten (10) years in tax determination, audit and/or interpretation of tax rules in the public sector. Additional job requirements At SUNAT, specialization studies, training in anti-avoidance rules and have no disciplinary sanctions in force.

Country	Chile	Mexico	Peru
Operating procedure	A report from the General Anti-Avoidance Rules Department that gives an account of the existence of avoidance is received. This report is presented whether the legal acts or businesses have generated a reduction in the taxable base equal to or greater than 1,000 UTM, or if a special tax benefit or regime has been accessed, or tax refunds have been obtained through abuse of legal forms. The Committee must make a ruling within fifteen days of receipt of the report. The decisions of the Committee are taken by an absolute majority of its members. Their decisions must be materialized in writing, leaving a record of the factual and legal grounds that support them.	Meeting behind closed doors in an ordinary way (first and third Wednesdays of each month if there is business) and extraordinary (for urgent cases). Minimum quorum of at least five member officials and the coordinator. Opinion is satisfied by the vote of more than half of the officials present; in case of a tie, the head of General Legal Administration of SAT or his alternate has the casting vote. If the opinion of the Collegiate Body is not received within two months, it will be understood in a negative sense.	The application of the GAAR is conducted in a procedure of final inspection, requiring the prior favorable opinion of this Review Committee. The audit body sends a report and the file to the Committee, which is notified to the audited person. The Committee summons the audited person to explain its reasons and may request a one-time extension of 10 working days to appear. The opinion must be issued within 30 working days and is approved by the majority.
Effects of the pronouncements	The Executive Committee recommends to the Director on the appropriateness of submitting a declaration of abuse or simulation request to the TTA or recommend the application of a SAAR of those that have been indicated in the citation. In this case, the background is sent to the regional directorate or area to complete the inspection. Finally, the Committee may establish that the assumptions for an avoidance request do not meet, instructing the reconciliation of the aforementioned items and certifying the completion of the inspection process. It is important to note that it is up to the Director of the Service to decide on the filing of the injunction, on advice of the Executive Committee.	The opinion of the Collegiate Body is binding on the tax authority for the purposes of applying Article 5-A of the CFF. It is not a precedent.	Binding for the audit, but it is not an impeachable act. Part of the file.

Country	Chile	Mexico	Peru
Transparency	The decisions of the Executive Committee must be materialized in writing, recording the factual and legal bases that support the decision. This written and informed formalization implies a degree of transparency in the register of its resolutions. The statement of abuse/simulation is made by the TTA (published judgment), at the request of the Director[13].	It does not publish the panel's direct pronouncements. However, the 'Guide on Friendly Procedures' points out that the application of a anti-avoidance rule may be the subject of such procedures. To date, Article 5-A of the CFF, although in force since 2020, had not been applied in a specific case due to the need to establish internal policies for its application.	SUNAT publishes an annual Management Report of the Review Committee, detailing the number of cases received, attended and the meaning of the opinions, without compromising the tax reserve or confidentiality.

[13] In March 2024, the Tax Court of the Bío Bio and Ñuble regions issued the first ruling in favor of the Internal Revenue Service (SII) applying the GAAR. In the case of Forestal Aurora SpA, the court determined that the company had created an inappropriate financial structure—an international financial institution with no other purpose than tax—which was considered an 'artificial' way to avoid the additional export tax, and not a legitimate loan. Subsequently, the Court of Appeals upheld that decision, holding that the exclusive purpose of the operation was elusive and there was no valid economic justification. (Internal Revenue Service (SII). (2024, March 20). The Tax and Customs Court welcomes the SII's position on the application of the general anti-avoidance rule [Press release]. Internal Revenue Service of Chile https://www.sii.cl/noticias/2024/200324noti01rp.htm).

ciat@ciat.org

ciat.org

WORLD BANK GROUP

SUNAT

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra