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<p>GAAR INTERPRETED: THE GENERAL ANTI-AVOIDANCE RULE</p> <p>Schwartz 2025 – Release 1</p>
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Publisher’s Special Release Note 2025

The pages in this work were reissued in October 2025 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the 2025 – 1 release. We will continue to review and update the content according to the work’s publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

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Highlights

Chapter 2 — The GAAR Committee and Administrative Procedures

New section 2:9 has been added. Section 2:9 outlines the CRA's new website, introduced January 9, 2025, offering guidance on GAAR application. The site includes illustrative examples of transactions where the CRA believes GAAR may apply and explains the interdepartmental GAAR Committee's role, chaired by the CRA. The CRA notes examples are not exhaustive and don't limit the Crown's position in current or future cases.

Chapter 5 — Judicial Interpretation Case Law

The following cases have been added:

- *Harvard Properties Inc. v. The King* where the Tax Court of Canada held Harvard Properties liable under section 160 of the *Income Tax Act* for unpaid tax liabilities of a related purchaser in a structured shopping centre sale. The TCC found parties didn't deal at arm's length and consideration was insufficient. Alternatively, the GAAR applied, and the Court rejected the taxpayer's argument that the normal reassessment period limited section 245 application.
- *Mony v. The King*, where the Tax Court of Canada applied the GAAR to attribute a capital gain realized by the appellant's spouse to the appellant. The Court found that transactions involving gift and sale of shares to the spouse, followed by sale to third-party investors, constituted abusive tax avoidance under subsections 73(1) and 74.2(1) of the *Income Tax Act*. The *Gervais* reasoning was applied, and the appeal was dismissed with costs.
- *Québecor Inc. v. His Majesty the King*, where the Tax Court of Canada allowed the appeal and found that transactions involving capital gains, capital losses, and corporate wind-up did not result in abusive tax avoidance. The Court held that transactions complied with the object, spirit, and purpose of subsections 69(5), 84(2), 85(1), and 88(2) of the *Income Tax Act*, and that capital losses reflected real economic losses. The GAAR was found not to apply.
- *Total Energy Services Inc. v. The King*, where the Tax Court of Canada applied the GAAR to deny non-capital losses, SR&ED; expenditures, and net capital losses claimed by the appellant. The Court found that the Companies' Creditors Arrangement Act (CCAA) Transactions and Total Conversion Transactions misused and abused subsections 111(5), 111(4),

and 37(6.1) of the *Income Tax Act*, resulting in fundamental corporate transformation and lack of continuity in identity. The appeal was dismissed and affirmed by the Federal Court of Appeal.

The following case has had further developments:

- *Magren Holdings Ltd. v. His Majesty the King* was dismissed by the Federal Court of Appeal, which applied the GAAR to deny Part III tax avoidance on capital dividends. The FCA found transactions constituted abusive tax avoidance frustrating capital gains and losses provisions by creating artificial capital dividend account increases without real economic gain, making Part III tax assessments reasonable. Leave to appeal to the Supreme Court of Canada was refused.