



Chapter Fifteen: Anti-Abuse Rules

Article 50: General Anti-Abuse Rule

This Article provides for a general anti-abuse rule applicable to Corporate Tax.

Any tax system can create incentives and opportunities for taxpayers to alter their behaviours to reduce their tax liabilities. Under most circumstances, such behaviours are acceptable, as taxpayers are permitted to optimise their tax position in a manner consistent with the purpose and provisions of the legislation. However, in some cases, taxpayers may seek to reduce their tax liabilities in a way that is not consistent with the original intent and purpose of the law whilst still complying with the letter of the law. Such activity is typically considered abusive, and it is internationally common for tax laws to include rules designed to curb such behaviour.

Although the Corporate Tax Law is designed to be business friendly and to encourage and maintain a stable investment environment, it is also necessary that the Corporate Tax Law contains the relevant and adequate safeguards to protect the integrity of the Corporate Tax regime. On this basis, the Corporate Tax Law includes not only targeted tax base protection measures (e.g. interest capping rules), but also a general anti-abuse rule.

The reason for a general anti-abuse rule is so that the Corporate Tax Law can be kept simple and permissive. It means that the Corporate Tax Law does not have to consider every possible way that taxpayers could seek to exploit the scope and reliefs of the Corporate Tax Law and any attempts to achieve a Corporate Tax benefit through abusive tax avoidance schemes may be addressed under this Article.

On this basis, this Article has been designed to allow the Authority to counteract transactions or arrangements for Corporate Tax purposes where it can be reasonably concluded that there is not a valid non-tax reason for the transaction, and one of the main purposes is to secure a Corporate Tax advantage that is not consistent with the intention or the purpose of the Corporate Tax Law. The Article thus provides for a power that can be exercised by the Authority to take action against tax abuse in a defined set of circumstances.

Clause 1 sets out the circumstances under which the anti-abuse rule would apply. This is based on a test of whether it can be reasonably concluded that the transaction is not entered into or carried out for a valid commercial or other non-fiscal reason which reflects economic reality, and where the main purpose of it is to obtain a Corporate Tax advantage (explained under **Clause 2**) that is not consistent with the intention or purpose of the Corporate Tax Law. The Article requires that this test is made having full regard of all relevant circumstances and **Clause 5** further specifies the facts that must be taken into account in determining whether the Article applies.

Importantly, the Person who has the requisite purpose and the Person who obtained the tax benefit need not be the same Person. In other words, this Article can apply when a Person enters into a transaction or arrangement if the main purpose (or one of the main purposes) of the transaction or arrangement is to allow another Person to obtain a tax benefit.

Clause 2 provides a non-exhaustive list of examples of circumstances that are considered a Corporate Tax advantage for the purposes of **Clause 1**. The following are a “Corporate Tax advantage” for the purposes of this Article:



- a refund or an increased refund of Corporate Tax; or
- the avoidance or reduction of Corporate Tax Payable; or
- the deferral of a payment of Corporate Tax or the advancement of a refund of Corporate Tax. The advantage here may not be to achieve additional monetary benefit, as overall the fiscal position will often be correct. However, there will be a time and cash flow advantage gained through, for example, accelerating Tax Losses in a way that goes against the spirit of the Corporate Tax Law, where the correct amount of Corporate Tax should be paid at the right time; or
- the avoidance of an obligation to deduct or account for Corporate Tax.

When the Authority is satisfied that a Corporate Tax advantage has been unduly obtained under **Clause 1**, **Clause 3** empowers the Authority to make a determination that the Corporate Tax advantages obtained as a result of the transaction or arrangement within the scope of this Article are to be counteracted or adjusted. In other words, **Clause 3** allows the Authority to “unwind” the tax outcome and treat the transaction or arrangement based on its economic reality. In practice, this will be given effect through the issuance of an assessment by the Authority.

Clause 4 provides a non-exhaustive list of the actions that can be taken by the Authority to give effect to the determination made under **Clause 3**. These can include:

- allowing or disallowing an exemption, deduction or relief in calculating Taxable Income or the Corporate Tax Payable, or any part thereof, or allocating it to any other Person; or
- recharacterising the nature of a payment (or any part thereof) or other amount for the purposes of the Corporate Tax Law; or
- disregarding the effect for the purposes of the Corporate Tax Law that would otherwise result from the application of other provisions of the Corporate Tax Law.

Clause 4 also empowers the Authority to make compensating adjustments to the tax liability of any other Person affected by the transaction or arrangement. For a compensating adjustment to be made in relation to a Person, the Person need not be a party to the transaction or arrangement; it is required only that they are affected by the transaction or arrangement.

Clause 5 provides a non-exhaustive list of the relevant facts and circumstances that must be taken into account when the Authority makes a determination.

Clause 6 confirms that where there is a proceeding regarding the application of this Article, it is the responsibility of the Authority to demonstrate that the determination made by the Authority is just and reasonable. In this context, “just and reasonable” takes the ordinary definition of fair and appropriate based on the facts and circumstances of the case.