



# Reconsidering the (in)effectiveness of GAAR(s) in the Context of Anti-Avoidance and Aggressive Tax Planning

## Abstract

General Anti Avoidance Rules (GAARs) have been widely implemented through domestic laws in the Europe Union (EU) and with the support of the OECD, which advocate the implementation of GAAR(s) within their countries (namely with the PPT rule in tax treaties). Despite all this governmental attention, GAARs have always shrouded in uncertainty and there have been difficulties regarding their application. There is a lack of understanding regarding the effectiveness of GAARs.

## Research Question(s):

*“Are GAARs an effective means of combating tax avoidance and aggressive tax planning?”*

To assess the question it is necessary to consider the following five sub-questions:

- (i) The implementation of GAAR(s) is now a global trend. What has lead to this spread?
- (ii) Of the two major approaches to anti-avoidance rules - statutory and judicial - which is the most common and why?
- (iii) Should GAAR be presented as hard law (e.g. ATAD), soft law (e.g. BEPS) or as a judicial principle (e.g. EU Abuse of Law Principle)?
- (iv) How have GAARs been applied by courts, and what are the levels of litigation arising from this?
- (v) Following on from the answers to the above, what are the patterns within countries and the comparison between the legal design features mentioned above, and which is most effective?

## Core Hypothesis

After answering research questions- and working on the assumptions that GAAR have spread worldwide- could a “one size fits all approach” be introduced in current global fiscal policy (e.g. PPT rule due to the MLI).

Could this political approach to tax avoidance schemes connote a mimetic effect within and between the policy design states regarding the adoption of the legal avoidance measures e.g. GAAR(s)?

### 1- Evolution’s of GAAR Timeline (2009-2020)



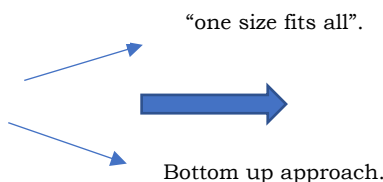
The number of countries that promulgated a GAAR rose dramatically. What drove countries to adopt this measure?

### 2-Analyse the different legal designs of GAAR(s) worldwide.

### 3-Assess the Law Making process: (i) type of legal instrument, and (ii) top down, “one size fits all approach”, or bottom up approach.

4-To do this it will be necessary to build bridges: within three different levels (legal environments): domestic law, European law and international law.

### Law making process



Legal environments:

- Domestic Law;
- European Law
- International Law