MFAcc | Master of Forensic Accounting

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The Role of Forensic Accounting in Identifying, Analyzing, and Preventing Aggressive Tax Avoidance: A Comparative Study on the Effectiveness of GAAR Regimes

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1. The Evolution of GAAR and Global Impact

A general anti-avoidance rule (GAAR) for most countries remains a critical tool to combat aggressive tax avoidance. The potential for cross-border tax avoidance schemes has grown over the years due to corporations becoming increasingly more multinational. Tax avoidance generally impacts three groups of people in different ways: taxpayers, businesses and the government. Tax avoidance can greatly impact the revenue of governments where taxpayers and corporations fail to pay their appropriate share of taxes. This reduces the government funding for essential services such as education, infrastructure, health care and social impact programs, affecting the quality of life for taxpayers. Another impact is the cost of investigating GAAR cases and legal costs, which is a burden on both governments and individuals involved. These litigations can often lead to significant penalties and reputational damage to large corporations and taxpayers. Therefore, a broader understanding of how tax avoidance is addressed on a global basis gives investigative forensic accountants (IFA) the necessary tools and knowledge to detect, analyze, and report on tax avoidance engagements.

1.1 Difference between Tax Avoidance and Tax Evasion

Even though the two terms- tax avoidance and tax evasion- are commonly used in similar manners in public discourse, they have distinct legal meanings. Tax avoidance transactions are within the law, involving aggressive tax planning strategies to minimize taxes (CRA, 2024b). It is generally lawful and involves tactics like surplus stripping, creation of an artificial capital loss, value shifts, and the use of discretionary trusts (CRA, 2025a). Tax evasion involves illegal acts defying the law, such as understating revenue, falsifying tax records, overstating expenses, and other document falsifications (CRA, 2024b). These

transactions typically have a criminal consequence, and may lead to prosecution in the criminal court, imposed fines or imprisonment and a criminal record. It is an offence under ITA (1985) Section 239 and Section 327 of the Excise Tax Act (CRA, 2025c). If it constitutes tax fraud, it would be a criminal offence under Section 380 of the Criminal Code (CRA, 2025c).

The economic substance of both types of transactions should also be considered, as mentioned above, most tax avoidance transactions have the appearance of a business or financial rationale and generally involve disclosure to the tax authorities, though the results are disputed. In Canada, we have disclosure requirements under ITA subsection 237.3(2) for "reportable" avoidance transactions (CCH AnswerConnect, 2025b). Tax evasion typically lacks economic substance and relies solely on deceit and the concealment of a taxable event with deliberately no disclosure (CRA, 2025c). Therefore, although both types of transactions are deemed to lack economic substance, most tax avoidance transactions prima facie have economic substance.

The result of a tax avoidance and tax evasion transaction may both be reduced taxes payable, however, the investigative approaches differ between the two. In tax evasion, IFAs must look for clear evidence of law avoidance or complex schemes, such as fake invoices, unexplained cash flows, and offshore accounts (CRA, 2025c). In the context of tax avoidance, concerning the Canadian Income Tax Act and the Canadian GAAR, mens rea is not a direct legal principle; however, the intention of wrongdoing and the knowledge of the correct actions leading to wilful blindness is key in determining an underlying abusive transaction or scheme (Duff, 2020). For avoidance transactions, the IFA would have to evaluate whether the transactions had economic substance and the business

purpose behind the transactions (Duff, 2020). It requires significantly more financial literacy and understanding of the tax laws in the specific jurisdictions to be able to find gaps or loopholes to construct tax avoidance transactions.

Typically, the profile of a culprit in a tax avoidance transaction requires in-depth financial knowledge at an advanced level, because the nature of the crime is to design complex tax schemes and disguise avoidance transactions as ones acceptable by the law. The individuals or corporations carrying out these schemes are not ones that would not pay their taxes or failed to file their tax returns, or made up some numbers on their tax returns and financials. These are highly educated white collar offenders, probably with diverse accounting, tax and law backgrounds, who know how to navigate the system and use their skills to come up with innovative tax planning strategies that are prima facie compliant with regulations (**Appendix 4**). These schemes are typically high risk and high reward, as the culprits can market and upsell these plans to their clients for a sizable fee, and the schemes can go on for an extended period before the authorities catch on. Examples of these are common tax shelters which create artificial losses to offset gains in corporations.

Tax evasion can be done by anyone, even those without extensive accounting or financial knowledge. For example, mobsters like Al Capone were caught for tax evasion due to failure to file tax returns between 1928 and 1929 (WTTW Chicago, n.d.). In conclusion, tax avoidance is structured to comply with the letter of the law while violating its intent. The intention or purpose behind the violation is often what makes tax avoidance transactions difficult to prove in court, since it is highly subjective in nature.

GAAR regimes assist in defining the grey line between tax evasion and tax avoidance in several ways. GAAR provide a judicial look beyond the technical form of the transaction

but deeper into the intent and economic substance. It provides consistency in the interpretation and criteria of what constitutes an avoidance transaction and defines cases when a taxpayer's intentions are not aligned with the purpose of the set provisions in the tax law. These are a few ways that GAAR regimes help deter aggressive tax planning. Sections 1.2 to 1.5 below provide a summary of the enacted GAAR or similar anti-avoidance rules used in various major countries.

1.2 United States- Economic Substance Doctrine

The United States historically favoured judicial doctrines over GAAR and Specific Anti-Avoidance Rules (SAAR). Therefore, the US does not have a GAAR in the same statutory form as other countries. In 2010, Congress decided to codify the economic substance doctrine into U.S. law under IRC Section 7701(O), reflecting an approach to integrate anti-avoidance oversight into the Internal Revenue Service (IRS) administrative practices (Cornell Law School, n.d.). While the codified law is not named as "GAAR", the cumulative effect of these doctrines serves to combat tax avoidance transactions with a similar goal to GAAR. In the U.S., IFAs are engaged in some of these cases to assess the economic substance and perform simulations or alternative scenarios to determine the tax benefits. This is demonstrated by cases listed in Sections 2.1 and 2.2.

The involvement of IFAs may be due to the IRS's heavily litigation-driven culture compared to other countries, where they have more high-stakes legal battles regarding tax controversies and aggressive tax planning (LexisNexis, 2024). For instance, Enron (Integrity Forensic, 2023), Al Capone (Yelland, 2020), KPMG Tax Shelter Fraud (Steenwyk, 2025), etc. This aligns with the implementation of the IRS's Global High

Wealth (Wealth Squad) audit team, that "largely made up of highly skilled auditors and forensic accountants." (Kossman, 2022). There is more cultural emphasis on forensic financial expertise, as many Big Four firms in the U.S. have more robust forensic accounting departments. Another reason for the involvement of IFAs in tax avoidance cases is the codified nature of the Economic Substance doctrine under Section 7701(O) of the Internal Revenue Code. This codified doctrine is suited for IFAs since it mandates rigorous analysis of the business purpose and economic substance (IRS, 2010).

The US has a mandatory tax disclosure system that is more mature and robust than other countries. This includes the Accounting for Uncertainty in Income Tax disclosure with FIN 48 and various regulations around reportable and listed transactions (IRS, 2010). These mandatory disclosures prompt companies to employ IFAs to ensure that documentation and economic substance would withstand IRS scrutiny (Henning et al., 2007). Lastly, the U.S. tax system is highly integrated with white collar crime enforcement (e.g., FBI, DOJ, IRS-CI); these inter-organizational collaborations also drive forensic accounting work.

1.3 United Kingdom- General Anti-Abuse Rules (UK GAAR)

The UK introduced their GAAR in 2013 as part of an initiative under the base erosion and profit shifting program (BEPS) under the Organisation for Economic Co-operation and Development (OECD) and G20 (HM Revenue & Customs [HRMC], 2022). UK GAAR has an advisory panel to review potential abusive arrangements (HRMC, 2022). The goal of the provision is similar to Canada's and targets abusive tax arrangements, but it is defined by a two-part test instead of a three-part test as in the case with Canada

(discussed in Section 1.6) (Binning & Robotham, 2022 as cited in Robotham, 2023). The two-part test consists of looking at various factors that influence objectivity and subjectivity, otherwise known as the "double reasonableness" test (HRMC, 2022). Their governing agency is HM Revenue & Customs (HMRC), and the burden of proof rests upon them to show that the transactions were abusive (LexisNexis, 2025). The GAAR investigation in the UK does not routinely involve IFAs, due to the HMRC typically leading these reviews directly and through the advisory panel, which involves legal, accounting, and tax experts (HMRC, 2018). However, potential areas where IFAs can be brought in include tax tribunal or court proceedings, assessment of economic substance or appraisal of complex accounting entries.

1.4 Australia- Part IVA of the Income Tax Assessment Act

In Australia, GAAR is contained within the Income Tax Assessment Act Part IVA and dates to 1981 (Australian Taxation Office [ATO], 2025). The country applies a "dominant purpose test" and determines when the scheme was entered into for the sole or primary purpose of obtaining a tax benefit. To establish a tax benefit, the Australian Taxation Office (ATO) must compare what happened (with the tax arrangement) to a hypothetical alternative scenario of what would have happened without the scheme (ATO, 2025). However, taxpayers argued in the past that if they hadn't been able to use the tax avoidance scheme, then they would not have even proceeded with the transaction or commercial projects at all (ATO, 2025). The Court agreed that in this hypothetical alternative scenario, the taxpayer would have earned no income and incurred no tax liability, so GAAR could not be applied. Therefore, in response to the above weakness, there was a 2013 amendment to the Australian GAAR (ATO, 2025). The amendment

introduced the concept of determining tax benefit in one of two ways: “The Annihilation approach” and “The Reconstruction approach” (ATO, 2025). The Annihilation approach ignores the steps that would make up the scheme, and the tax benefit is calculated as if those steps never happened. This approach works well for any transaction that lacks commercial substance and is artificial. The second is called the Reconstruction approach, which compares the actual scheme to a reasonable alternative that could achieve the same commercial or economic outcome without the tax avoidance transactions (ATO, 2025). It focuses on what the taxpayer would have likely done without the tax avoidance transactions, and ideally used for commercially motivated projects. The ATO also employs an advisory panel called the GAAR Panel, which consists of senior ATO officers and external members. This panel is established to guide the application of GAAR and gives an independent and consistent perspective on its application (ATO, 2025).

Along with GAAR, Australia also has an extension to GAAR called “Multinational Anti-Avoidance Law” (MAAL) applying to certain benefits on or after January 1, 2016 (ATO, 2025). This extension of GAAR acts to ensure that multinational enterprises pay their appropriate portion of tax on any profits earned in Australia. The goal of this provision is to counteract any tax base erosion by multinationals through artificial arrangements to avoid the attribution of profits to a permanent establishment in Australia. This aligns with the OECD’s action plan on base erosion and profit shifting that was delivered on October 5, 2015 (ATO, 2025). Overall, the Australian anti-avoidance rules and laws appear very robust and extensive. However, the involvement of IFAs does not appear to be routine in Australia. These laws are primarily legal instruments and are interpreted by legal experts within the ATO. The enforcement of these laws is also generally led by the ATO’s legal,

policy, and economics team rather than IFAs. IFAs have a stronger presence in criminal tax cases, such as evasion, fraud or misappropriation cases; however, as anti-avoidance cases are civil and unless there is a complex financial scheme, IFAs would not typically be involved. Under certain situations, such as reconstruction analysis, tracing of multi-layer corporate structure and assisting in court proceedings requiring financial expertise, IFAs can still be employed.

1.5 India (Income Tax Act Chapter X-A)

GAAR was introduced in India by the Finance Act in 2012 and added to the Income Tax Act in Chapter X-A Section 95; however, it was subsequently only brought into force on April 1, 2017 (Lakshmikumaran & Sridharan, 2017). Modelled after South Africa, Canada, Australia, and New Zealand, India's GAAR applies to impermissible avoidance transactions that lack commercial substance or lead to an indirect tax benefit (Lakshmikumaran & Sridharan, 2017). Impermissible avoidance arrangements in the Indian GAAR refer to an arrangement in which the "main purpose" is to obtain a tax benefit, which is a similar definition to the Canadian GAAR discussed in Section 1.6. The Indian GAAR can override other provisions in the tax law, making it especially unique and powerful (Lakshmikumaran & Sridharan, 2017). Along with its ability to override any other sections in the Income Tax Act of India, it applies even if one part of a tax avoidance scheme is deemed impermissible (Lakshmikumaran & Sridharan, 2017).

In addition, the country has Specific Anti-Avoidance Rules (SAAR) applying automatically to specific scenarios such as dividend stripping, transfer pricing, and thin capitalization rules (Lakshmikumaran & Sridharan, 2017). It is also codified in the

Income Tax Act in various sections, such as section 94 and subsection 2(22)(e) (Lakshmikumaran & Sridharan, 2017). The difference between the SAAR and GAAR also lies in the timing of their application; the SAAR is reactive and is enacted after the abuse is noticed, and the GAAR is proactive, relying on several principles. The GAAR will override the SAAR if cases arise where both might be applicable (Lakshmikumaran & Sridharan, 2017). Based on the above, it appears that India's tax anti-avoidance regime, particularly after the implementation of GAAR, is technically sophisticated, with many of the best global practices adopted from other major countries. Despite the advancements, IFAs do not appear to be typically used in GAAR or SAAR enforcement due as tax-related investigations are dominated by legal officers and general tax inspectors from the CBDT (Income Tax Department) (PWC, 2017).

1.6 Canada- Income Tax Act Section 245 (Canadian GAAR)

Canada was one of the first countries to codify the GAAR into its income tax law, and other countries followed soon after in response to the increase in global tax shelters and base erosion practices. In Canada, GAAR was introduced in Bill C-139 and embedded in the Income Tax Act (ITA) Section 245. It provided the Canada Revenue Agency (CRA) with a statutory mechanism to deny tax benefits resulting from transactions that are abusive in substance but not abusive in appearance (CRA, 1988). The CRA in practice applies GAAR vigorously; as such, during 2023 to 2024, there was a review of thousands of cases for GAAR and applied it to over 85% of the contested cases (**Appendix 1**). IFAs are not traditionally involved in Canadian GAAR cases, as there is a specialized body within the CRA that reviews transactions for potential abuse under Income Tax Act (ITA)

s.245 (CRA, 2024b). However, there is room for IFAs to be better involved in tax-related litigations regarding GAAR.

1.7 Summary of International GAAR Regimes

As international tax planning strategies and corporations expand overseas, the future success of the GAAR regime is dependent upon collaborative efforts from each jurisdiction. There is growing complexity in uncovering GAAR cases, especially when many of these tax avoidance schemes can expand across multiple countries. A government that shapes its GAAR narrowly can become inadequate to counteract sophisticated tax avoidance schemes. The involvement of IFAs in the current landscape of GAAR presents an unleveraged resource that can strongly play a role in enforcing GAAR and enabling more success in GAAR prosecutions. Their specialty and expertise in tracing the flow of funds internationally, uncovering hidden relationships and interviewing suspects can give the legal support needed in court to demonstrate abusive intent. Especially when there is limited information, IFAs are strong in their investigative abilities and document their findings in a way that would benefit whichever side they represent in court. The challenge for GAAR globally is to move past the narrowly defined statutes and present stronger cases by incorporating better evidence of economic substance, intent and objective of these tax avoidance schemes to the court. See **Appendix 2** for a summary of countries that have existing GAAR or GAAR-like provisions.

2 Notable International Cases Involving Tax Avoidance

The GAAR cases in this section are from countries discussed above that are impactful in their size and are listed according to the involvement or the possible involvement of IFAs. The United States was primarily discussed due to their adaptation of IFAs in its tax investigations, especially when the cases are large in scale.

2.1 United States v. KPMG LLP (2005) - One of the Largest Tax Shelter Cases

Between 1996 to 2002, KPMG LLP marketed and sold a series of abusive tax shelters, such as the BLIPS (Bold Linked Issue Premium Structure), FLIP (Foreign Leveraged Investment Program), and OPIS (Offshore Portfolio Investment Strategy), to wealthy individuals and corporations (Kenton, 2021). These shelters were specifically designed to create artificial losses amounting to $11 billion (Steenwyk, 2025) and resulting in the erosion of $2.5 billion in US tax bases (Johnson, 2007). The U.S. Department of Justice (DOJ) charged KPMG with promoting these shelters, which eventually led to a prosecution agreement in 2005 (U.S. Department of Justice). KPMG pleaded guilty to criminal wrongdoing and paid approximately $456 million in penalties. The foundation of this case was the principle that transactions must have an economic substance beyond just receiving tax benefits. The DOJ argued that the shelters created by KPMG could not pass this test, as their object, spirit, and purpose were solely to create artificial losses without any real economic substance (U.S. Department of Justice, 2005). The principles in the economic substance doctrine (core GAAR concept in the US) deny tax benefits from transactions that lack economic substance. For KPMG, the shelters consist of circular transactions utilizing offshore entities to create artificial tax losses effectively. The second doctrine that would come into play is the substance over form, and was

violated by KPMG as the transactions in the shelters were all formally disguised. If the series of complex transactions were simplified into a single transaction, one would see that the true intent of these transactions was the artificial losses created.

IFAs played an instrumental role in deciphering KPMG's complex schemes made by intelligent and highly trained accountants (Steenwyk, 2025). Forensic accounting expert witnesses were able to trace the flow of funds through FLIP, OPIS, and BLIPS sheltering schemes. IFAs quantified billions of artificial tax losses and evaluated the reasonableness of the fees charged by KPMG (Steenwyk, 2025). They were able to report any discrepancies between internal records and client filings. In detail, they would need to deconstruct these financial shelters and complex transactions to demonstrate to the Court that the shelters lacked genuine economic substance, which is a key factor in the determination of tax avoidance (Steenwyk, 2025). The IFAs can further trace the cash flow of funds to show their movement across various entities and bank accounts in a circular fashion, and ultimately serve no real business purpose. These analyses were crucial in building the case against KPMG and showcases the role that IFAs can play in uncovering complex tax avoidance cases.

2.2 Son of BOSS abusive tax shelter (2000-US) (U.S. Department of Treasury [USDOT], 2005)

During late 1990, "Son of BOSS" tax shelters started popping up as a means to the creation of artificial losses, with over 30 docketed cases and IRS pressed for its crackdown (Temple-West, 2012). The IRS and Treasury shut down the previous version of this tax shelter scheme back in 1999 with Notice 99-59. The tax shelter scheme is called the Bond and Option Sales Strategies (BOSS); the son of BOSS is the new version

of the pre-existing scheme that was shut down (Temple-West, 2012). The mechanism of this shelter was to produce artificial losses that are used to offset revenue or gain from other transactions, like many tax shelter schemes, by a series of complex transactions involving interests in a partnership. The scheme became popularized and was sold as a tax planning strategy by many tax firms and professionals.

Despite the market popularity, the tax authorities felt differently about the nature of these plans. Notice 2000-44, issued by the Treasury in response to this, emphasizes they "would deny the purported losses resulting from this shelter transaction because they do not represent bona fide losses reflecting actual economic consequences as required under tax law." (UDOT, 2005). In one of the Son of BOSS cases, United States v. Home Concrete & Supply, LLC, the Court convicted the two partners involved and illustrated that this type of case might possibly have criminal conviction risks (Temple-West, 2012).

According to the IRS, the Son of BOSS tax shelters involved around 1,800 individuals and cost the government $6 billion in lost tax revenue and eventually was able to recover half of that (Taxnotes, 2006). However, due to the lengthiness of these litigations, the sheer number and complexity of the BOSS schemes, the IRS experienced various losses in Court to apply the Economic Substance doctrine. In the case of *Sala*, the Court disallowed IRS penalties due to the transactions being viewed in the context of a five-year trading period (The Tax Adviser, 2010). The Court held that it was a "reasonable possibility of profits beyond the tax benefits" and a valid "business purpose other than tax avoidance" (The Tax Adviser, 2010). This resulted in the allowance of the losses for *Sala*.

IFAs played a role in several "Son of BOSS" tax shelter cases. For example, the Analysis Group had some of their IFAs retained by the DOJ in a case where the Dillon Trust

Company sold two corporations with significant unrealized gains to Humboldt Shelby Holding Corporation (HSHC) (Analysis Group, 2024); subsequent to the transaction, the unrealized gain would be realized for tax purposes, indicating now there were tax liabilities and consequences. To avoid the tax liabilities, HSHC engaged in a series of transactions that were deemed to be the "Son of BOSS" schemes to generate artificial losses to offset the realized gains. The IFAs filed reports and were able to testify at trial regarding the economic conditions to be considered on the transferor of the asset and the consequential tax liabilities (Analysis Group, 2024). Furthermore, they were able to give their opinion on several topics such as "the lack of non-tax motivations or economic benefits from the sale of the two companies, as well as the numerous 'red flags'" that pointed to the intent of these transactions was to obtain tax benefits via reduction in tax liability using artificial losses created from the tax shelter (Analysis Group, 2024).

2.3 Commissioner of Taxation v. Hart (Australia) (2004)

This case involved a couple who took out a loan for their home under a Split Loan Facility marketed by the company RAMS Home Loans (Hart v. Commissioner of Taxation [Hart v. CT], 2004). This arrangement involves the creation of artificial deductible interest. The loan was structured so that one part had regular payments as the portion for the home purchase (the non-deductible portion), and the other portion was the investment, allowing interest to be capitalized to the principal, thus increasing the deductible portion of the loan (Hart v. CT, 2004). Any payments made on the loan were allocated solely to the non-deductible portion of the home loan. The result is that the interest on the investment portion would become fully deductible as it increases (creation of the artificial deductible interest), while the home loan portion can be paid down rather

quickly (Hart V. CT, 2004). The ATO challenged this arrangement in 2004 under their GAAR in Part IVA of the Income Tax Assessment Act (Hart V. CT, 2004). The Court mainly viewed the transactions in terms of whether there was a primary intent to obtain a tax benefit, and whether that would have been the option of a reasonable person looking at this arrangement. The Court held that the dominant purpose of the transaction was to obtain a tax benefit and focused on the substance over form (Hart V. CT, 2004), which is a central concept to all GAAR regimes. IFAs are not explicitly named to be involved in the Australian case, however, many of the IFA's skillset would have contributed, such as dissection the economic benefit of the "wealth optimizer structure", analyzing the loan amortization and interest creation over time, and providing supporting evidence on substance over form.

2.4 HMRC v. Tower MCashback LLP 1 & Another (UK) (2011)

This case predated the formal introduction of GAAR in the UK in 2013, however, it laid the foundation for legal principles that were later established in the formal GAAR, making it a landmark case and warranting a discussion. This case involves a tax avoidance scheme involving the purchasing of software licenses by limited liability partnerships (LLPs), where the individual investors, often high net worth individuals, joined the LLPs and contributed 25% capital towards the purchase of the software assets (HMRC v. Tower McCashback LLP 1 & Another, 2011). The remaining 75% was funded solely by non-recourse loans obtained from the seller of the scheme, and subsequently, the investors would lease the software back to the seller. This allowed the investors to claim 100% capital allowance (CA) on the inflated purchase price, even if the investors

only contributed 25% in cash and did not assume any risk for the remaining 75% on the non-recourse loans (HMRC v. Tower McCashback LLP 1 & Another, 2011).

Under the Capital Allowances Act 2001, the investors would not have been entitled to the 100% CA they claimed since the true amount of capital and risk assumed was the 25% paid in cash (HMRC v. Tower McCashback LLP 1 & Another, 2011). The Court clarified that the LLPs failed to demonstrate that the entire expenditure was used to acquire the software rights and elaborated on the requirements for compliance for claiming such deductions. This case demonstrates that an avoidance transaction similar to other global GAAR regimes lacks commercial value and economic substance. It shows the substance over form reasoning and scrutinized transactions with no commercial purpose other than to obtain a tax benefit.

3.1 International Treaty Shopping

Treaty shopping occurs when taxpayers use intermediary entities or jurisdictions to access tax benefits for which they are not intended beneficiaries through complex structures or arrangements as defined by the OECD (OECD, n.d.). These schemes often involve the use of various shell companies or minimal business entities set up in low tax jurisdictions, which enables “non-residents” to claim reduced withholding taxes or exemptions. These are against the intent of the tax treaties and lead to the deprivation of revenue from the governments. GAAR rules allow for a way to counteract this by recharacterizing or disregarding transactions and structures that lack economic substance, as their main purpose is to obtain a tax benefit (CCH AnswerConnect, 2025a). The

outcome of GAAR on treaty shopping is that the treaty routing would be deemed impermissible, and the treaty relief would be revoked.

3.2 GAAR Mechanism to Stop Treaty Benefits

Invoking GAAR to deny treaty benefits typically relies on the analysis of the tax legislation's purposes outlined in the treaty agreement. The conditions for the application of GAAR are set by various case laws in the Tax Courts (Hildebrandt, 2021). Subsequently, the tax authorities' decisions might later be subject to judicial review, where the court may consider the "object, spirit, and purpose" of the treaty and the specific country's domestic tax laws.

3.3 Potential Involvement of IFA in Treaty Shopping Investigations

IFAs can be involved in treaty shopping investigations in several supporting roles. When examining a case of treaty shopping, they can look for signs or red flags, such as entities that do not have any real employees or business operations, an overly complex ownership structure, investments that are reinvested in the origin country after distribution, or an unusual flow of financing. They may also use different software tools and AI, such as data analytics platforms, ledger analysis software to sift through complex transactions, financial data, bank records, and transaction logs. Through the application of data analytics, IFA can detect recurring treaty shopping patterns, especially in multinational enterprise structures.

By conducting a review of other key documents such as intercompany agreements, royalty/licensing payments and transfer pricing reports, they can see if the transactions in the arrangement are at arm's length or are designed for shifting profits from high to low

tax jurisdictions. Later, they can use the information gathered to reconstruct the economic reality by thoroughly testing the substance of the tax arrangement steps and verifying whether the claimed business purposes are genuine. They may reperform calculations of the withholding taxes under different scenarios, interview company executives and employees, and send out verifications for cross-border payments with associated banks.

Also, they may be engaged to find the "true" tax bases, reallocation calculations of income and expenses and advise how GAAR would apply to the facts. The goal of the IFA for treaty abuse investigation is to translate any complex financial schemes into a clear document or report that assists the authorities in understanding or proving a tax avoidance scheme involving treaty shopping.

Ultimately, the findings and evidence in the report might be presented to the Court, and the IFA might be required to provide expert testimony.

3.4 OECD's Efforts to Stop Treaty Shopping

At the international level, the OECD has put great efforts into stopping treaty shopping by the announcement of the 2017 OECD Model Tax Convention and the corresponding BEPS Action 6 report that explicitly addresses treaty abuse (OECD, n.d.). This convention addresses the three key methods of addressing treaty shopping. The first of the three methods is the Principal Purpose Test (PPT), where the PPT clause denies treaty benefits if one of the principal purposes of the arrangement would be to secure a tax benefit (OECD, n.d.). This is the default anti-abuse rule by the OECD, and the onus of proof relies on the taxpayer to demonstrate that the transaction had genuine economic substance beyond tax savings (Aibidia, n.d.).

The second approach to address treaty abuse is the "Limitation-on-Benefits" Clause (LOB) (OECD, n.d.). This is otherwise known as the ownership/base erosion test. This consists of both an ownership and base erosion requirement. The ownership requirement requires that at least 50% of the entity's shares (both voting and value) must be directly or indirectly owned by qualified persons, such as individuals or entities that reside in the treaty partner country (Miller Thomson, 2013). The ownership must be maintained throughout the taxation year. For the base erosion requirement, the entity must not make significant payments such as interest, royalties or management fees to non-qualified persons outside the jurisdiction of the treaty (Miller Thomson, 2013). Specifically, no more than 50% of an entity's gross income may be paid or accrued in the form of deductible payments to persons who are not qualified as residents. The LOB is designed to prevent the company from being primarily owned by entities that are not genuine treaty residents, and the income is not eroded as a deductible payment to non-residents (Miller Thomson, 2013). The third method is the PPT equivalent to paragraph 9 of Article 29 from the 2017 OECD Model, combined with a detailed or simplified version of the LOB that appears in paragraphs 1-7 of the same 2017 OECD Model (n.d.). Any treaty benefits that arose from treaty abuse can be denied under PPT or LOB, which serves a similar purpose as GAAR and other anti-avoidance provisions.

3.5 Canada- Treaty Shopping

In 2005, GAAR was extended to apply to the interpretation of tax treaties in Canada, and it had a retroactive application as far back as 1988 (CCH AnswerConnect, 2025a). It allowed provisions of GAAR to play a crucial role in the prevention of international treaty shopping, by allowing tax authorities to disregard or recharacterize tax

arrangements that effectively shift the tax bases or routes income from a high to a low tax jurisdiction. The retroactive carry-back to 1988 allows the Canada Revenue Agency (CRA) to backtrack and investigate historical GAAR cases that were previously not covered by the provision.

There are over 90 tax treaties in Canada offering reduced withholding tax rates on interests, dividends, royalties and capital gains (Business Tax Canada, 2025). The vast number of tax treaties makes Canada a common target for treaty shopping, especially in favourable treaty countries (ex., Luxembourg, Barbados, Netherlands) to avoid Canadian taxes. In Canada, the mechanism of treaty shopping usually involves the routing of dividends, royalties and interest through a low-tax jurisdiction. The low-tax jurisdiction usually means the country has a favourable tax treaty with Canada through intermediate holding companies in those treaty countries (Business Tax Canada, 2025). However, the application of Canadian GAAR to tax treaties was confirmed using various case law.

The below two Canadian cases outlined important clarifications and turning points for how GAAR can be applied to treaty shopping in Canada.

3.5.1 Canada v. MIL (Investments) S.A., 2007 FCA 236 (Canada v. MIL [Investments], 2007)

This case was the first major case where GAAR was considered in the context of a tax treaty in Canada, and that GAAR can apply to tax treaties. (Canada v. MIL (Investments), 2007). MIL (Investments) S.A. (“MIL”) was incorporated in the Cayman Islands as a holding company and subsequently relocated to Luxembourg. Shortly after it relocated, MIL disposed of its shares in a Canadian mining corporation. A large capital gain arose

from this transaction, MIL claimed an exemption on this gain under Article 13(4) of the Canada-Luxembourg treaty (Canada v. MIL, 2007). This article exempts the capital gains that arose from taxes in Canada unless it is derived from Canadian real property. The CRA applied GAAR with the reasoning that MIL had moved to Luxembourg solely to obtain treaty benefits, and that constitutes tax avoidance (Canada v. MIL, 2007). This decision was subsequently dismissed by the Federal Court of Appeal (FCA) for several reasons. The Court held that simply arranging their affairs in another country, even if for the reason of taking advantage of the tax treaty, does not necessarily constitute abuse (Canada v. MIL, 2007). Also, the treaty with Luxembourg doesn't require economic substance or active business to qualify for the exemption. The only requirement is residency in the treaty country, and this was met (Canada v. MIL, 2007). Given the previous two points, GAAR requires that the taxpayer's actions must defeat the object, spirit and purpose of the relevant provisions. In this case, it was not demonstrated that the treaty exemption was being abused or that the treaty was being circumvented (Canada v. MIL, 2007).

3.5.2 Canada v. Alta Energy Luxembourg S.A.R.L 2021 SCC 49 (Canada. V. Alta Energy Luxembourg S.A.R.L., 2021)

This involves Alta Energy Luxembourg S.A.R.L. ("Alta Luxembourg"), a foreign entity that was indirectly owned by a U.S. private equity fund (Canada v. Alta Energy Luxembourg S.A.R.L. [Alta Energy], 2021). Alta Luxembourg acquired shares in Alta Energy Partners Canada Ltd. ("Alta Energy"), which is a Canadian corporation that engages in the business of exploration in oil and gas. In 2013, Alta Luxembourg sold the shares in Alta Energy and realized a capital gain of approximately $380 million (Canada

v. Alta Energy, 2021). Alta Luxembourg claimed capital gains exemption under Article 13(4) of the Canada-Luxembourg treaty. The CRA, the Tax Court of Canada and the Federal Court of Appeal denied the exemption due to alleged treaty shopping, and GAAR was applied under ITA s. 245 (Canada v. Alta Energy, 2021). However, the Supreme Court of Canada ruled in favour of the taxpayer and found that the application of the capital gain exemption did not abuse the treaty. The significance of the ruling is that it reaffirmed that GAAR applies to treaties, and the abuse test focuses on the object, spirit, and purpose of the avoided provision (Canada v. Alta Energy, 2021).

3.6 OECD and Canada - Use of the Multilateral Instrument (MLI)

There is an integration of the OECD BEPS and PPT in Canadian tax treaties, which was introduced through the adoption of the OECD's MLI (Marley et al., 2021). The Principal Purpose test that was mentioned in Section 3.4 was introduced through the MLI, allowing Canada to deny treaty benefits if the principal purpose of the tax arrangement or transaction was to obtain such benefits, unless granting these arrangements aligns with the purpose and objective of the specific treaty. The purpose of this test is to assess the "intent" behind the transaction. Both GAAR and MLI-PPT have the result of preventing tax avoidance, but they operate on different mechanisms (Marley et al., 2021). GAAR would require finding an instance of abuse or misuse, while MLI can deny the benefit based solely on whether the transactions had a purpose of obtaining a tax benefit, even if the transaction complies with the literal terms of the treaty (Schwarz, 2020). The CRA has indicated that they might apply either method when it comes to treaty shopping, abuse and avoidance cases.

4. The Canadian GAAR Regime

4.1 Details of GAAR in Canada

The Canadian GAAR was established in response to the Supreme Court of Canada's decision in *Stubart Investments Limited v. Her Majesty the Queen* (1984). A case where the Supreme Court considered whether their tax-driven corporate restructuring was a sham or invalid due to a lack of business purpose. The case relates to Stubart Investments (profitable subsidiary- taxpayer), who transferred its business assets to its sister company (Grover Cast), which had accumulated tax losses (Stubert Investments Limited v. the Queen, 1984). The taxpayer transferred the assets to the sister company, and Grover subsequently appointed the taxpayer as agent to continue operations, allowing the losses to offset any future profit. The Minister decided the arrangement was a sham and incomplete (Stubert Investments Limited v. the Queen, 1984). The case went to the Tax Appeal Board, Federal Court (Trial Division) and the Federal Court of Appeal, where they all held the same position as the Minister of National Revenue. However, the Supreme Court allowed the appeal and found the transaction complete, not a sham (Stubert Investments Limited v. the Queen, 1984). It is a key development in GAAR, where the Court clarified the distinction between sham transactions and genuine arrangements. The Court also emphasized that a lack of bona fide business purpose does not in itself invalidate a transaction unless specific anti-avoidance provisions are invoked (Stubert Investments Limited v. the Queen, 1984). The taxpayer has the right to organize their business transactions to minimize tax liabilities as long as it’s in the realm of tax planning. Also, the case had a judicial interpretation influence, indicating that courts should consider the “object and spirit” of the law (Stubert Investments Limited v. the Queen, 1984). These

principles would later be foundational to the application of GAAR. As one of the oldest statutory anti-avoidance rules internationally, it remains today as the core tool for preventing large corporations and wealthy individuals from exploiting the loopholes of tax law to avoid contributing their fair portion of taxes (CRA, 2025a). Although the strategies used by these individuals may be "technically" compliant with the law, aggressive tax planning defeats the intent of the law. Without GAAR, the tax authorities would have difficulty catching these sophisticated schemes. Internationally, GAAR aligns Canada with global initiatives such as the OECD's BEPS framework, which was established to help fight profit shifting from high taxation to low taxation jurisdictions and treaty shopping (CRA, 2024b).

As GAAR is a tax law concept, forensic accounting can play a crucial role in assessing whether abuse or misuse occurred. This requires the IFA to reconstruct transaction histories, find out the financial motives and identify any inconsistencies in documentation. Tax avoidance cases often end up in court, which would require expert testimony and reporting.

4.2 The Canadian Income Tax Act

Pursuant to the Income Tax Act Section 245, GAAR applies to any transaction that constitutes an "avoidance transaction". The definition of "avoidance transaction" is defined under ITA s.245(3) as transactions that result in a tax benefit or a transaction that is part of a series of transactions that result in a tax benefit (CCH AnswerConnect, 2025a). The term "tax benefit" is further defined under ITA subsection 245(1), meaning a reduction, avoidance, or deferral of tax or other amounts payable, or an increase in a refund of tax or another amount under the Act. In simplified terms, a tax benefit is the outcome of a

transaction or series of transactions that results in less taxes payable, tax deferral, tax entirely avoided or an increase of a tax refund (CCH AnswerConnect, 2025a).

4.2.1 The Three-Step Framework for Applying GAAR

The three-step framework for applying GAAR was established in the case of *Canada Trustco*, where the Supreme Court determined whether GAAR applied to a transaction or a series of transactions (CCH AnswerConnect, 2025a). This framework was later reasserted by the Supreme Court in the case of *Lipson v. Canada (2009)* and *Copthorne Holdings v. Canada* (2011). The first step of this framework involves determining whether a transaction or series of transactions results in a tax benefit (CCH AnswerConnect, 2025a). The second step is to assess whether the transaction qualifies as an avoidance transaction under section 245(3) of the Income Tax Act (1985). This means the transaction was primarily undertaken to obtain a tax benefit rather than for bona fide purposes. Lastly, the evaluation of abusive tax avoidance is determined under section 245(4) (CCH AnswerConnect, 2025a). This step involves the Minister, who bears the burden of proof for the transaction to be deemed as abusive under section 245(4), where it frustrates the objective, spirit and purpose of the provision in the Act. In summary, the first step serves as a general inquiry and a foundation that the court has determined to assess whether GAAR should be applied (CCH AnswerConnect, 2025a). This sets the stage for a deeper examination of the transaction's purpose and aligns with the later steps that set out the objectives in the Income Tax Act.

GAAR litigations frequently rely on investigative techniques such as analyzing timelines, determining the factual nexus of various transactions, and tracing transactions to determine

the who, what, and when. The goal of accounting evidence for GAAR should be to assist the Court in determining the intent and result of the transactions.

To clarify, the role of an auditor might be simply to present the calculation by showing that the only benefit of a transaction was deferral of tax and can show that the taxpayer's business cash flows were unchanged. However, IFAs can reconstruct what would have happened under an alternative to non-avoidance.

4.2.2 Notable Canadian Cases involving GAAR

The cases below outline significant updates and pivots for the application of GAAR and clarification from the Courts on how GAAR is interpreted.

4.2.2.1 Dean Knight Income Corp v. Canada (2023, SCC)

The company attempted to deduct $90 million of non-capital losses by executing a complicated series of share exchanges, the creation of a new entity, and a change in control (Dean Knight Income Corp. v. Canada, 2023). The transactions were structured to be compliant with the Income Tax Act Section 111(5), which governs non-capital loss carryover and ownership. An analysis of the transaction timeline would have revealed that Dean Knight's parent company entered an arrangement where de jure control (legal control) was not transferred (Dean Knight Income Corp. v. Canada, 2023). However, another entity gained de facto control (factual control) over the business and the use of the tax attributes. The Supreme Court found that the control was effectively transferred and the primary purpose of the change in control was to utilize the tax attributes (from the change in control) to reduce tax liabilities. It frustrated the object and purpose of that section, and by looking past the legal form of the transaction, it showed their maneuver was primarily

aimed at circumventing tax liabilities, and the intended deductions were reassessed and denied under GAAR (Dean Knight Income Corp. v. Canada, 2023).

A detailed analysis of the transaction steps would have revealed that the above was true, and there was avoidance of the control restriction in Section 111(5) contrary to the Court's intent (Dean Knight Income Corp. v. Canada, 2023). The Supreme Court's decision relied on the findings that the primary purpose of the complex series of transactions was to avoid tax liabilities.

An IFA could reconstruct what would have happened had Dean Knight not engaged in the restructuring. This reconstruction could involve analyzing the financial statements and projections for cash flow based on the assumption that there was no tax avoidance scheme. By comparing the actual outcome with the tax avoidance and the reconstructed results, the IFA can present to the Court concrete evidence to support the argument that the transactions lack any legitimate business purpose beyond the reduction of tax liabilities. The IFA could perform additional work in this case by meticulously mapping out the share exchanges, the change in control, and inquiring into the details of any documentation and business activities of the newly created entity. After the IFA presented their findings in a report, they could serve as the expert witness to explain the reconstructed alternative, quantify the tax and other benefits obtained from this series of transactions. Their goals would be to prove that the transactions lacked a genuine business purpose to demonstrate that the taxpayer had violated the object and spirit of the Act.

4.2.2.2 Lipson v. Canada (2009, SCC)

This is a case where the taxpayer, Mr. Lipson, sold shares in the family corporation to his wife, who obtained these shares through a bank loan (Lipson v. Canada, 2009). The

taxpayer used the proceeds from the share sale to buy a home and obtained a mortgage on the house. However, the mortgage was not used on the home but was used to repay the wife's share purchase loan from the bank (Lipson v. Canada, 2009). The taxpayer tried to deduct the mortgage interest by arguing it was tied to the income-producing shares (due to refinancing), and the dividend income from those shares should be attributed back to him under the attribution rules. The issue in this case is whether the deduction of mortgage interest and the application of the attribution rule constituted abusive tax avoidance transactions under GAAR.

The Court concluded that there were two tax benefits in this case- the interest deduction of the mortgage and the allocation of that deduction to the taxpayer through the spousal attribution under s.74.1(1) (Lipson v. Canada, 2009). The purpose of the spousal attribution rules in s.74.1(1) of the Income Tax Act is to prevent income splitting and tax avoidance between spouses. The fact that the taxpayer tried to reduce his tax liability on dividend income attributed to him with the mortgage interest was an abuse of the rules and its sole purpose (Lipson v. Canada, 2009). The Court disallowed the interest expense deducted from the taxpayer's return and reallocated the deduction back to the wife, which was deemed reasonable.

The forensic accounting question for this case would be whether the series of transactions had a bona fide non-tax reason. Did the transactions change the taxpayer's legal rights and obligations, or were they merely a superficial rearrangement? Did the timing and flow of the funds align with the stated purpose and motive of the transactions? The Court would likely look beyond the form of the transaction, such as the share sale and mortgage and examine the substance. An IFA and expert witness could analyze the taxpayer's overall

financial situation and provide an opinion on whether the transactions were commercially reasonable or driven primarily by tax reduction. The IFA could also look over the loan agreements, share transfer documents, and mortgage documents to see if the legal rights and obligations agree with what they have stated. Additionally, they could trace the flow of funds from various bank accounts and look at the timing of those transactions to identify any red flags or inconsistencies. This would allow the expert witness and IFA to provide an opinion in court on whether the transactions were structured in a way to maximize the tax benefit. They can also conclude whether the wife had the financial capacity to manage the shares independently, whether there was a reason why the wife owned the shares and whether the sale of shares was necessary to purchase the home. These may all be artificial transactions that lack commercial substance, orchestrated with the goal of tax avoidance.

4.3 2024 GAAR Amendments

In response to cases like the above, the Government of Canada amended GAAR through Bill C-59, been in force since 2024, to introduce a "main purpose" test, which is a lower threshold than the "primary purpose test" (Doane Grant Thornton, 2024). The primary purpose test was used pre-2024; it focused on the main or primary purpose of a transaction that might have constituted avoidance. The scope of this test was narrower as it focused on the leading motive of the avoidance transaction, which had to be for the tax benefit (Doane Grant Thornton, 2024). The main test imposed as of the 2024 amendment is broader in scope and includes transactions where "a main" purpose is to obtain a tax benefit; the distinction is that not "the main or exclusive" purpose. This method aligns more with the OECD MLI-PPT and allows GAAR to be more easily invoked by the CRA (Doane Grant Thornton, 2024).

Secondly, they added a penalty equal to 25% of any tax benefit arising from any tax avoidance transactions deemed under GAAR (CRA, 2025a; Durward Jones Barkwell, 2024). Furthermore, they extended the reassessment period for any GAAR assessment by 3 years. This penalty can be avoided by a voluntary disclosure or, as required by legislative disclosure, filed with the CRA under mandatory disclosure rules (MDR) (Durward Jones Barkwell, 2024).

Due to the above amendments in Canadian GAAR being quite recent, there are no publicly disclosed Canadian court cases where this penalty was applied.

4.4 Examples of Common Tax Avoidance Schemes Caught Under GAAR in Canada

4.4.1 Surplus Stripping

These transactions occur when they are carried out specifically for the benefit of a shareholder (individual or non-resident) where the extraction of a corporation's surplus or retained earnings is done in such a way that reduces the tax burden. This can be achieved through a return of capital, such as a withdrawal that exceeds the shareholder's original after-tax investment (CRA, 2025a). It can be considered abuse if the transactions are designed to circumvent the intended tax consequences under ITA Sections 84, 84.1, and 212.1, as well as Subsection 89(1) (CRA, 2025a). The reasoning for why these arrangements are abusive is that they defeat the objective, spirit, and purpose of these provisions, and can be challenged under GAAR.

A) **Section 84** for surplus stripping: This would apply to the generic surplus stripping scenario where a corporation redeems, acquires or cancels shares for more than their paid-up capital (PUC), the excess amount would be a deemed

dividend (ITA, 1985). Without this section, the taxpayer could withdraw the retained earnings tax-free by inflating returns. It effectively prevents the taxpayer from extracting corporate surplus as a tax-free return of capital rather than a deemed dividend (ITA, 1985). IFAs for this type of surplus stripping could be tasked with reconstructing corporate transactions to determine whether the reorganization or redemption of shares results in legitimate returns of capital or deemed dividends. The company might try to mask the withdrawal of retained earnings as a distribution of capital to avoid a taxable dividend (ITA, 1985).

B) **Section 84.1** for related party share transfers: The purpose of this provision is to limit taxpayers from converting taxable dividends into tax-free capital gains when selling shares in a Canadian private corporation to a non-arm's length corporation (ITA, 1985). The provision is designed to stop related party sales used to strip surplus tax-free by inflating the adjusted cost base (ACB) of the corporation or via capital gain exemptions (CGE). When the section is invoked, it puts a limitation on the PUC and ACB of the shares received in the transaction and any excess is deemed as a dividend (ITA, 1985). IFA can also play a role in detecting non-arm's length surplus stripping schemes by identifying abusive attempts to convert dividend income into capital gains. This can be achieved by examining the valuation of the fair market value (FMV) of shares and determining whether an artificial step in the transfer of shares to the related party would trigger section 84.1 (ITA, 1985).

C) **Section 212.1** for cross-border surplus stripping: The purpose of this section is to prevent non-residents from taking surplus from a Canadian corporation, often within the same group, without eroding the Canadian tax base (ITA, 1985). The provision recharacterizes all or part of a gain on the sale of a Canadian corporation share as a deemed dividend subject to Part XIII withholding tax to prevent tax-free repatriation. This adjusts the PUC of the shares in the purchaser company and imposes a deemed dividend, thereby preventing foreign shareholders from eroding the Canadian tax base. As mentioned in the sections above, in international tax avoidance cases, IFAs can assist with the evaluation of how the foreign parent company interacts with their Canadian subsidiaries and whether their interaction is structured to avoid withholding tax (ITA, 1985). It usually involves a determination of whether the substance of the transactions is to mask a dividend, supporting CRA's position that the non-resident is trying to strip surplus through non-arm's length transfers inappropriately.

4.4.2 Creation of an Artificial Capital Loss

Taxpayers can engineer a transaction to offset a capital gain deliberately with a capital loss (artificially created) (CRA, 2025a). That engineered capital loss would not reflect a loss with any genuine economic substance or represent a real decline in capital asset value. These artificial losses won't change the taxpayer's overall financial position, thereby misusing or abusing ITA sections 38, 39, and 40 (CRA, 2025a). The mechanism of value shifting through this abusive arrangement occurs by creating artificial losses involving "value shifting" strategies. These strategies entail a series of complex transactions designed to transfer value from an existing share class to a newly issued class of shares

(CRA, 2025a). Once the original shares have been stripped of their value, they would subsequently be sold at nominal value to an unrelated party at a loss. This would create a capital loss that does not reflect any genuine economic value, and later, this created loss would be used to shelter capital gains for the present or carry forward (CRA, 2025a). These arrangements are abusive because they defeat the objective, spirit, and purpose of the provisions found in ITA sections 38, 39, and 40, and can be challenged under GAAR (CRA, 2025a).

In these types of abusive arrangements, IFAs can play a role in determining if any superficial loss avoidance has occurred by tracing the series of transactions that led to the artificial loss and quantifying the real vs artificial impact of the disposition.

4.4.3 Discretionary Trusts

The application of the 21-year deemed disposition rule under ITA section 104(4), a "21-year rule" intended to prevent taxpayers from using trusts to indefinitely defer the recognition of capital gains for tax purposes and ensure that there is periodic realization of any accrued gains within trusts (CRA, 2025a). The mechanism of the rule deems that a trust (other than certain excluded trusts, such as those benefiting a settlor or their spouse/common-law partner) is deemed to dispose of and reacquire its capital properties every 21 years at its FMV. The anti-avoidance measure of section 104(4) is in subsection 104(5.8), where it prevents trusts from circumventing the 21-year rule by transferring property to another trust in a manner that would not be at FMV (CRA, 2025a). As noted by CRA during the 2017 Canadian Tax Foundation (CTF) Annual conference, GAAR may

apply to transactions that are abusive and are effectively avoiding the 21-year deemed disposition rule.

An abusive arrangement by circumvention of subsection 104(5.8) may involve the distribution of trust properties to a Canadian corporation owned by non-resident shareholders, or to a corporation whose shares are held by another Canadian resident discretionary family trust (CRA, 2025a). Such arrangements are designed to circumvent section 104(5.8) and delay the realization of capital gains, despite no substantive change in economic ownership. Where the abusive transactions are structured as an avoidance measure to the 21-year deeming rule, without a genuine commercial purpose, it would be considered a violation of GAAR, as CRA would look at the object, spirit, and purpose of subsection 104(4) and 104(5.8) (CRA, 2025a).

IFAs can assist in the above by conducting risk assessments involving high-net-worth estate planning, valuation of any property transfer if it occurred at FMV, reviewing complex trust structures for potential abuse of the 21-year deeming rule, and flagging any transaction if it appears to violate the deeming rule.

5.1 Digital Forensic Tools and Techniques for Investigating GAAR cases (Canada)

As aggressive tax avoidance planning becomes increasingly complex, IFAs and government authorities are becoming more reliant on advanced digital tools to assist them in investigations and to gather evidence to support challenging arrangements that may be caught under GAAR. These tools are often designed to leverage AI analytics, network analysis, and digital forensics to flag transactions (Langton, 2018). Similarly, many foreign jurisdictions have been using large-scale data mining, blockchain monitoring, and

international information sharing platforms to help alleviate cross-border abusive transactions (Guilherme-Fryer, 2023).

CRA has been noted for the use of "enhanced business intelligence and advanced data analytics" in risk assessments for large corporations with emphasis on using these data mining tools in audits and investigations (CRA, 2024b). The CRA annually "use electronic tools to conduct risk assessments of the corporate tax returns of all large businesses," which improves its ability to identify high-risk transactions (CRA, 2024b). Additionally, there was reporting that CRA developed predictive analytics using machine learning (ML) to "identify potential areas of non-compliance by discovering unseen patterns in data" and that CRA uses this analytics tool to build new models for flagging high-risk taxpayers (Langton, 2018). Social network analysis (graph techniques) can also be employed to "automate the identification of links between individuals and businesses" (CRA, 2018), often via graphing databases like Neo4j to map complex ownership structures (Morgner, 2018). CRA analysts cross-reference datasets including tax filings, property records, corporate registries, etc., to determine if there are any hidden relationships or undisclosed transactions. For example, CRA has begun using data on high-wealth neighbourhoods to augment audits and started receiving international banking data to catch any non-compliance (CRA, 2018).

IFAs in Canada often employ specialized audit-analytic tools to sift through massive sets of financial data similar to CRA. Artificial Intelligence (AI) and ML are also transforming the work of IFAs for the detection of tax avoidance and fraud (Mohr & Bogdan, 2024). AI can "identify hidden patterns and produce reliable predictions" that traditional methods can miss (Vigeant & Butler, 2025).

IFAs can feed large volumes of transactional records into ML models to look for red flags or anomalies, such as detecting a series of related party structuring trades or a series of complex transactions below a specific regulatory threshold (Mohr & Bogdan, 2024). Tools, including CaseWare IDEA and Diligent (ACL/Galvanize), are commonly used in forensic accounting investigations as they allow for automated testing of full ledgers to detect duplication in payments, trend analysis, Benford's Law tests, and rapid extraction of any anomalies (CaseWare Canada, 2024; Diligent, 2025). Teams can import client records into IDEA/ACL, then run routine checks to identify unusual transactions or red flags. For GAAR, these may include internal revaluation adjustments or rounded capital gains numbers. This can be achieved by running database queries on corporate tax returns or personal filings, looking for any suspicious patterns such as corporations with no FTEs claiming to have large losses, or repeated redemption of shares by the same private investor.

IFAs can access digital evidence such as emails, PDFs and databases using specialized software such as EnCase, Forensic ToolKit (FTK), or Tableau, which can parse and visualize the data (Opentext, 2025; Exterro, 2025; Tableau, 2025). It allows the investigators to image a hard drive and run key searches on critical terms. Neo4j uses graphic data to trace a chain of ownership or nominee structures (Neo4j, 2025). It can highlight circles of control that might evade attribution rules by encoding shareholders, trusts, and subsidiaries of a corporation. These ownership tracking analytics can detect schemes where shares are transferred, or trust arrangements are used to shift value and quickly reveal circular ownership structure and layered trusts using these tools. In one reported CRA criminal case unrelated to GAAR, agents seized terabytes of data from

devices and analyzed them for hidden currency transactions (CRA, 2025b). Similar techniques can be applied to civil cases to correlate bank statements, trading posts and electronic data.

The usefulness of digital forensics is evidenced by the CRA's Criminal Investigations Program, including a "Digital Forensics Services Section" that "procures hardware, software, and tools used by CFAs (computer forensic analysts)" to handle digital evidence. Instead of being accounting-focused, CFA specialize more in recovering and analyzing electronic data, including encrypted or hidden files (CRA, 2025b). Due to the rise of cryptocurrency, CRA has also employed blockchain analytics tools that identify IP addresses, correspondent accounts, or relationships that tie virtual currency movements back to taxpayers (CRA, 2024a). When investigating GAAR schemes involving offshore transfers, IFA can use blockchain explorers to see whether funds are moved to its disclosed foreign entity or just cycled through an onshore account. Other tools that can be used to uncover complex tax issues include languages such as SQL, Python, and R to sift through the data (DePaul University, 2024). Other visualization tools often used are PowerBI and Qlik for mapping networks.

Overall, Canada's approach to the investigation of tax avoidance increasingly mirrors forensic accounting best practices, combining traditional investigative methodologies with data analytics to uncover complex tax issues.

Examples of how to apply digital forensic tools in CRA are given example scenarios of GAAR:

5.1.1 Surplus Stripping

During investigations involving surplus stripping, CRA (2025a) notes that GAAR will apply to transactions undertaken to "strip corporate surplus" that defeats the object, spirit and purpose of the provision in the ITA. If the taxpayer uses a series of complex share redemptions and reorganizations to extract funds that exceed their after-tax capital investments, data analytics could be used to flag any unusual increase in PUC or rounded amounts in the deemed dividends (Murray, 2024). Tools like IDEA/ACL are used to detect patterns such as a taxpayer receiving a dividend equal to the amount of existing capital losses, or reversed splits of inflated ACB. Such patterns were seen in cases involving surplus stripping, where GAAR was triggered, in the case of *Descarries v. Canada* (2014). *Descarries v. Canada* was a case where appellants who were shareholders of a corporation engaged in a series of transactions that resulted in the distribution of the corporation's surplus to them in a manner that was not at arm's length. The tax court found the transactions abusive and contravened the object, spirit, and purpose of s.84.1 and is often cited in discussions regarding surplus stripping and the application of s.84.1 (Descarries v. Canada, 2014).

5.1.2 Artificial Capital Losses (or Value-shifting transactions)

These transactions, as discussed above, are defined by CRA (2025a) as the creation of an artificial loss as one "that does not reflect a true decline in value". These kinds of losses are often created by shuffling shares amongst related parties to crystallize losses while retaining overall ownership. Data analytics used in forensic accounting can assist in catching many of the red flags, such as if a series of acquisitions and dispositions net out to nil (circular trading), etc. Data mining of various trades could also be used to show when a

taxpayer sells capital assets to a related party at nominal value while simultaneously recognizing a significant loss used to offset a capital gain.

5.1.3 Discretionary Trusts and the 21-year Deeming Rule

CRA explicitly warned taxpayers that they will apply GAAR to any family trust arrangement that is deemed to circumvent the 21-year deemed disposition rule (CRA, 2025a). Digital analytics can be used to analyze trust returns and beneficiary data. In a classic anti-avoidance case, if a trust transfers property to another new trust at a price below FMV, the analytics can cross-reference trustee identities, properties being transferred, and trust elections taken. Graph analytics like Neo4j can be used to map chains of trusts and highlight when the same settlor or beneficiaries are involved in any avoidance transactions without FMV under ITA 104(5.8) (1985).

5.2 Digital Forensic Tools and Techniques for Investigating GAAR cases (International)

Both Canada and international tax authorities have begun to embrace digital forensic tools and AI to enhance their investigations. As companies typically are multinational and growing globally, cross-border investigations and monitoring become increasingly important.

5.2.1 Global Tools and International Collaborations

In the United Kingdom, HMRC developed the “Connect” system, an AI analytics tool that holds over 55 billion data records of their taxpayers (Guilherme-Fryer, 2023). The system can store data from multiple sources, such as corporate filings, bank accounts, social media, travel records, property records, etc. This information is then used by ML to

search for inconsistencies with any declaration of taxes (Guilherme-Fryer, 2023). Connect compares land registry and online rental advertisements to the landlord's tax return to flag undeclared rental income. For any self-assessment returns, Connect can match flight records, overseas accounts and any vehicle ownerships, allowing the government to analyze billions of data points to pinpoint when avoidance may have occurred (Guilherme-Fryer, 2023). HMRC announced that the Connect system is currently at the core of their tax investigations.

In Australia, the ATO has also reported that they have been ramping up its analytics capabilities. In an industry report, it was noted that ATO claimed they "have identified over $530 million in unpaid tax bills and prevented $2.5 billion in fraudulent claims using AI models, including deep learning and natural language models." (Asquith, 2025) The Australian GAAR Part IVA's enforcement is jurisdiction-based, and the tools used for data mining and predictive analytics are similar to the Canadian system.

The U.S. does not have a formal GAAR as previously mentioned; however, a similar provision is codified in IRC 7701(o) as the economic substance doctrine (Cornell Law School, n.d.). The IRS Criminal Analytics Program (CAP) is responsible for developing data analytics, and they use tools including Reveal (formerly EnCase), Palantir, SAS Fraud Framework, and IBM i2 Analyst's Notebook (IRS, 2024). These are public sector tools used by the government; however, in the private sector, IFA's in public accounting firms and roles supporting litigation use different digital tools to detect aggressive tax planning strategies and avoidance transactions to support the IRS or DOJ. Common applications used by these firms are CaseWare IDEA/ACL, Alteryx, Tableau, Neo4j and

programming languages like Python or R. The summary of these tools is found in **Appendix 3**.

Aside from the national tax authorities, the OECD and other bodies also regulate data exchange systems aimed at combating modern anti-avoidance work. The Common Transmission System (CTS) by OECD is a secure platform to exchange CRS data and works "not as a data warehouse, rather it works like a traffic policeman" (Trans World Compliance, n.d.). The CTS does not analyze the data itself, rather, it allows the local tax authorities to receive Common Reporting Standard (CRS) data from their regulated financial institutions. The local tax authorities can feed the received CRS files into their analytics platforms to highlight accounts or assets not declared on returns. (Trans World Compliance, n.d.) The newest update on this system is the CTS 2.0, which allows transmission of other data types such as country-by-country reporting, tax rulings, etc. Additionally, the OECD has implemented a new crypto-asset reporting framework (CARF), "providing automatic exchange of tax-relevant info on crypto-assets and was developed to address the rapid growth of the crypto-asset market and to ensure that recent gains in global tax transparency are not gradually eroded." (OECD, 2023) Other implemented initiatives by the OECD and the United Nations Development Program (UNDP) include their program called "Tax Inspectors Without Borders (TIWB) program", which sends expert tax audit teams to developing countries to help build their digital tax audit capacity (TIWB, n.d.). TIWB works with cases involving transfer pricing and avoidance audits, where international tax and accounting experts advise on data analysis techniques and documentations. This type of program does not directly impact combating tax avoidance, nor uses digital tools for addressing GAAR. However, it lays a

solid foundation and educates countries about best practices in digital audit and reporting and establishes a global network for sharing better compliance methods (TIWB, n.d.).

To prevent avoidance transactions within trusts, a growing global trend is to use beneficial ownership registers and automated mapping of ownerships (Diligent, 2019; Athennian, 2024). Countries have maintained their central registries of the ownership or controlling shares in resident corporations or trusts. These registries are transformed into ownership graphs and mappings by combining with corporate records (Diligent, 2019). Further analysis can be done by software that imports the registry data and uses algorithms to uncover common controllership in multiple entities, amongst other hidden links. This becomes important in cases where GAAR might be invoked, since complex avoidance transactions often involve shell companies and nominee arrangements. An example is when a country notices back-to-back transactions engaged by a foreign entity or individual who indirectly owns or controls several different domestic entities. This setup is typical for tax avoidance. Ownership mapping can make bulk analysis available to tax authorities through beneficial ownership registries.

In summary, international efforts to employ cutting-edge analytics in the pursuit of abusive tax avoidance. HMRC's Connect, ATO's AI and IRS CAP are successes that demonstrate the power of digital forensic programs and systems in identifying tax compliance issues (Guilherme-Fryer, 2023; Asquith, 2025; IRS, 2024). The OECD's platforms (CTS, CARF, and TIWB) also facilitate international financial data flow enabling global collaboration (TIWB, n.d.; OECD, 2023; Trans World Compliance, n.d.). Together, these tools enforce cross-border compliance of anti-avoidance regulations and leverage technology to trace the flow of funds across multiple jurisdictions.

5.3 Challenges of Applying GAAR from a Forensic Perspective

In the sections below, the challenges of applying GAAR internationally and nationally are discussed. This is tied into how IFAs can be of assistance to make the GAAR investigations more effective and present a more compelling story to the Court.

5.3.1 Challenges of the Global GAAR Regimes

Tax avoidance is often seen as a grey area in tax, as it is not as black and white as tax evasion in its legal and practical definitions. Therefore, more reliance is placed on the interpretation of the tax acts, regulations and case laws rather than a straightforward evidential conclusion. Most GAARs are subjective and involve a degree of legal uncertainty, such as their reliance on the test of dominant purpose, economic substance, intent and reasonable tax benefit. There is a degree of uncertainty in the judicial interpretation of the provisions governing GAAR, depending on the situation specific to a case. The determination of whether a transaction constitutes avoidance can vary drastically depending on the fact pattern of a case, the level of court, and the jurisdiction.

In many countries, there might be inconsistent enforcement of GAAR policies and sometimes delays, as experienced in the UK (Goodall et al., 2012) and India (India Law Journal, 2023). Delays in the enforcement policy can leave investigators confused regarding what evidence is available or how they will present it to establish their case. There may also be a lack of resources and interdisciplinary expertise required to establish a case. For example, if only tax experts are involved, they would not know how to make a report that is easy for the court to interpret, additionally, most tax experts are not trained in how to present a case to the court. IFAs who are specifically trained in investigative accounting and expert witnessing might not have the requisite tax expertise required to

interpret the tax provisions. Therefore, the argument for a more interdisciplinary team might assist the court in building stronger cases for anti-avoidance purposes.

Another issue is that GAAR is typically applied retroactively, that is, after the transactions or the avoidance schemes have already been carried out. It can be attributed to the lack of robust ruling guidance provided to taxpayers who are seeking more clarity before they engage in a transaction that might be deemed avoidance.

It makes it even more confusing for taxpayers when some national GAAR policies often do not align with the OECD's BEPS initiatives. There might exist overlaps between the GAAR, SAARs, PPT-MLI, and various treaty-based measures, which potentially lead to further confusion and legal inefficiencies, especially when a case overlaps multiple jurisdictions.

5.3.2 Challenges of the Canadian GAAR Regime

This Canadian GAAR is often critiqued for its favour on legal formality over economic substance, where many of the Canadian GAAR-related case law and provisions in the ITA emphasize the interpretation of the text of the statutes. This emphasis often causes missed opportunities to identify artificial schemes unless it is clearly stated in the statutes. Legislation, when interpreted too rigidly, can cause a boxed-in effect and fail to address cases that might be outside this box. An additional issue is GAAR audits and litigation in Canada are mostly addressed by CRA audits and legal counsel, without the use of an interdisciplinary team, and the lack of IFA involvement reduces the authority's capacity to uncover or present a compelling case in court; therefore, proving the complex transactions constitutes as avoidance can be extra challenging. The integration of a

multidisciplinary team would be useful for litigation and reporting avoidance transactions. Even though there were legislative amendments to GAAR in 2024 (Doane Grant Thornton, 2024; CRA, 2025a), which made the scope of the provision more expansive and imposed penalties that should be preventative for anti-avoidance purposes, the reliance on the legislation and the lack of sufficient clear guidance for the interpretation of the legislation are still existing constraints.

5.4 Role of Forensic Accountants in GAAR Cases

IFAs in the U.S. are making significant strides in enforcing the law on some of the most notorious tax avoidance and evasion schemes. These IFAs are routinely incorporated as experts in those investigations to support the tax specialists and the legal team. Canada is lagging in its enforcement of GAAR and its success in these trials, even when similar cross-border tax avoidance schemes and issues are faced. Most importantly, IFAs can be involved in identifying red flags in complex structures or high-risk transactions early, which would be a proactive measure instead of a reactive one. IFAs can also assist during the discovery phase of the investigation with their specialty in tracing high-risk transactions and artificial arrangements. Especially when tax avoidance schemes often involve multiple offshore entities, a circular series of transactions, and valuations of assets often inflated. These are essential techniques and skills to unravel transactions that may not be at face value abusive but may fail when subject to the economic substance tests. IFAs can further identify when a transaction lacks economic substance beyond just the legislative interpretation or legal form. This is better aligned with the intention of GAAR to catch abusive arrangements that technically comply with the law but defeat the object, spirit and purpose of the provision. IFAs are trained to apply this substance over

form reasoning to their reports and as expert witnesses, establishing the mens rea of the wrongdoing. IFAs are specifically and expertly trained to conduct interviews to obtain evidence. This is important for the establishment of purpose and intent. GAAR cases often hinge on the "dominant purpose", "economic substance" test and proving whether the primary purpose of the transaction was to gain a tax benefit (ATO, 2025; CCH AnswerConnect, 2025a). Often, it would be hard to tell on paper or on just transactions alone, but gathering narrative evidence through interviews can reveal the intention behind the transactions or scheme. Additionally, when multiple stakeholders are interviewed, IFAs can often identify inconsistencies in their testimonies and between the documented evidence. These inconsistencies can be used to cast doubt in court on the legitimacy of the intent or business purpose of the transactions. Their analysis can be crucial to persuading the court by demonstrating the economic impact of the transaction and proving how the transactions undertaken are abusive. The argument might be that tax experts might be better versed in tax legislation and how the tax impact is calculated, but a counterargument exists that tax experts are not trained in how to report or present this to a court, which makes it persuasive. How the story or the case is presented has a significant impact on the ultimate decisions by the courts, and IFAs are trained to tell the financial story.

5.5 Challenges of applying GAAR from a Forensic Perspective

From a forensic accounting investigation perspective, GAAR cases often require collaborations across legal counsel, tax specialists and IFAs. Due to their diverse background and specialities, there may be communication issues or institutional silos within a firm setting. This could impede the IFAs from obtaining the required data or

evidence to support their case, especially when dealing with offshore teams and foreign entities or trusts. Also, taxpayer information is often privileged in tax avoidance cases, and without any court orders, it would be hard for IFAs to obtain this data.

Another stumbling block is the ambiguity in legal standards; as such, establishing intent is often a legal obstacle and isolating the "tax benefit" component. Furthermore, the IFA would need to prove that the underlying motivation of the transaction was not for a legitimate business purpose and that there is no economic substance. An added layer of difficulty exists since GAAR is meant to target highly structured tax avoidance transactions, often circular or layered series of complex transactions with foreign subsidiaries and shell companies set up in foreign jurisdictions. In cross-jurisdictions, it may prove difficult to obtain privileged legal tax documents, and the evidence and information required might be scattered and concealed across multiple countries and locations. This lack of or failure to get a good evidence trail might be difficult. Another issue with IFAs dealing with GAAR is that it is specific to tax, and while IFAs are well-versed in forensic accounting and auditing, they may lack training in complex tax issues and compliance requirements. Therefore, the emphasis is on a balanced and integrated team of both tax experts and IFAs. If these teams are engaged by governmental authorities, the budget allocated to the IFAs might be tight, which would limit how detailed the investigation can be.

5.6 Future of GAAR Regimes

As international and Canadian GAAR regimes evolve as globalization increases cross-border investments, tax avoidance schemes are likely to become more sophisticated. It is

important to expect GAAR regimes to be more aligned with the OECD's multilateral instruments, such as the PPT (OECD, n.d.). There should be an increased requirement across international GAAR regimes to have mandatory reporting and disclosure requirements (e.g. Canada); this is a proactive measure to counter anti-avoidance. Jurisdictions should also impose penalties to allow for deterrence. For instance, Canada not only imposed a penalty in its 2024 GAAR amendment, they broadened the scope of its GAAR, resulting in an increased number of GAAR cases being prosecuted (**Appendix 1**) (Doane Grant Thornton, 2024; CRA, 2025a).

The emergence of AI and data analytics can also receive investment and be further developed for internal use by the tax authorities. This would save investigators time by using AI to look for red flags using these digital tools. The investigators should still validate the findings by the digital tool to ensure the accuracy of the findings and analyze the transactions in detail. The tax authorities can also develop ML tools to identify common features of abusive schemes using historical data, which will improve the efficiency in identifying red flags. AI can be used proactively as well, such as if businesses can get pre-determination by entering their proposed transaction in a tax authority-established tool. This tool can give taxpayers a response recommendation - whether they should adjust the transaction to avoid it falling under GAAR. Although digital tools might enhance the ability of forensic investigations, it does not replace the traditional skills of an IFA.

Another issue that most GAAR regimes have not touched on is digital assets and currencies such as cryptocurrency, bitcoin, etc. These can be used to carry out tax

avoidance schemes and are a growing concern. GAAR provisions need to directly address digital currency and asset-based tax planning.

6 Conclusion

General anti-avoidance rules are designed to be a line between illegal tax evasion and the minimization of tax through avoidance transactions. These schemes sit at the centre of accounting, law, tax and public policy. GAARs generally provide the legislative response and a policy-based check that strikes down contrived schemes that undermine the tax base. Incorporating IFAs into the investigative aspects of these cases can help pierce through the complex structures and ensure that reported financial positions reflect economic substance. Additionally, technology has created proactive and reactive capabilities used in forensic investigations. Some of the major capabilities of forensic accounting in GAAR cases mentioned above included analysis of the economic substance tests, identification of red flags, interviews, and financial information analytics (Doane Grant Thornton, 2024; CRA, 2025a). This means instead of reacting to an anonymous tip or auditing the entity for tax avoidance transactions, these can now be mined using data analytical tools and AI.

Furthermore, the international GAARs and OECD's BEPS initiatives provide a legal framework sufficient to capture complex tax avoidance schemes. However, there is continued reliance on case law across each country to give clear guidance and interpretation to the statutes. The ultimate goals of all these regulations are to ensure fairness and integrity in the global and national tax regimes and the prevention of base erosion. Artificial arrangements should be properly penalized under GAAR. This sends a

clear message that any avoidance transactions outside of legitimate tax planning would not be acceptable. The penalties for GAAR imposed by Canada added a penalty equal to 25% of any tax benefit arising from any tax avoidance transactions deemed by the GAAR (CRA, 2025a). However, the question remains if this is a sufficient penalty to deter tax avoidance. From some of the tax sheltering cases above, the schemers often reaped far more than the penalties they received for selling and marketing these tax avoidance plans. This could be addressed by setting the GAAR penalties on fees or gains of the schemer rather than the tax benefit of the taxpayer; often, the taxpayers who buy into these plans are victims as well. This might have a greater deterrence effect on accounting firms and financial institutions that wish to sell abusive tax planning arrangements.

The GAAR regime, both nationally and globally, is critical to deterring and detecting avoidance transactions. It is an essential legal framework to preserve the integrity of the tax systems and provide an effective tool addressing transactions meant to abuse the tax provisions. However, the limiting factors of the GAAR provisions are outlined by the narrow interpretation of the legislation, potential consistency issues with its application and any inherent biases on the subjectivity of the purpose test. IFAs are an unleveraged tool in these anti-avoidance cases, and by combining the investigative insights and an understanding of legal frameworks like GAAR, the future of anti-avoidance efforts can become increasingly effective through their involvement.

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Appendix 1

Cases of GAAR in Canada

Period Range	Cases Reviewed	Total Cases Applied	Cases Applied GAAR by %	Percentage Change YoY
2023-2024	2,294	1,950	85%	+2%
2022-2023	2,029	1,684	83%	+2%
2021-2022	1,831	1,483	81%	0%
2020-2021	1,694	1,372	81%	1%
2019-2020	1,608	1,286	80%	N/A

The above appendix shows an increase year over year as the "percentage of cases that applied GAAR" increased from 80% in 2020 to 85% in 2024 (CRA, 2025a).

There are several potential explanations for the trend, as aggressive tax planning becomes more cross-border and complex, more high-net-worth individuals and corporations are trying to minimize taxes using sophisticated methods. Therefore, the CRA in response more frequently invoked GAAR. Secondly, the CRA might have increased the depth in which they review cases for GAAR and made the process for panel review more streamlined. This would explain how more GAAR cases are off the queue annually and getting reviewed. Canada aligned itself with OECD's BEPS initiatives, which drives enforcement of anti-avoidance protocols leading to more proactive application of GAAR (OCED, n.d.). The 2024 Amendment to GAAR also as mentioned above "broadened the scope" of GAAR (CRA, 2025a).

Appendix 2

Summary of International GAAR/GAAR-like Provisions

Country	Key Provision/Law	Tests used based on the provision	Details of the steps in the tests	Penalties
Canada	Income Tax Act Section 245 (1985), Budget 2023 amendment	Three step GAAR test (from case law *Copthorne Holdings v. Canada, 2011* and *Canada Trustco Mortgage v. Canada, 2005*)	1. There requires to be a tax benefit (CRA, 2025a). 2. A major purpose of the transaction was to obtain the tax benefit 3. The transactions have resulted in an abuse or misuse of the object, spirit, or purpose of the provisions of the income tax act relied on (CRA, 2025a).	Denial of the tax benefit. Additional penalty starting in 2024 of 25% penalty on the amount of the denied tax benefit (Doane Grant Thornton, 2024).
United States	IRC Section 7701(o), 2010 (Cornell Law School, n.d.)	Two-Prong Economic substance test	1. Does the transaction have any economic substance? (As does it result in a change in the economic position) 2. What is the business purpose of entering into the transaction? (As is there significant non-tax reason for conducting the transaction)	20% penalty on understatement from disallowed transaction and 40% penalty if transaction is not properly disclosed.

India	Income Tax Act Chapter X-A (Lakshmikumaran & Sridharan, 2017; PWC, 2017)	One of the four conditions is sufficient to invoke GAAR	The arrangement would be disallowed if one of the following conditions is met: 1. The transaction lacks commercial substance. 2. The transaction must have resulted in misuse or abuse of the provisions in the Act. 3. The transaction was carried out for non-bona fide purposes and the main purpose was to obtain a tax benefit. 4. The transaction created rights/obligations not normally created between arm's length persons.	The tax benefit would be denied and penalty under section 270A of 50% to 200% of the tax avoided. (Chokhawala, 2025)
Australia	Income Tax Assessment Act Part IVA (ATO, 2025)	Three-part statutory test	1. There must have been a "scheme". (the interpretation for "scheme" as determined by the Court, which can be wide.) 2. There must have been a tax benefit obtained under the above scheme. 3. The dominant purpose of the transaction must be to obtain a tax benefit. The third aspect is determined by 8 factors under section 177D(2) of the ITAA:	The tax benefit would be denied and penalties of 75% of avoided tax plus any additional interest.

			a. Form and substance of the scheme b. Manner in which it was carried out c. Timing of when the scheme was entered into, and length of the scheme was carried out d. Tax benefit resulted as part of the scheme e. Changes in the financial position of the taxpayer f. Changes in financial position of persons connected to the taxpayer g. Any relevant parties or entities used to disguise control.	
United Kingdom	Finance Act 2013 GAAR (HRMC, 2022)	"Double Reasonableness" Test	The determination is guided by a GAAR panel: 1. There must be tax abuse that goes beyond reasonable tax planning. 2. There reason for entering into the transaction must be "considered reasonable" by a reasonable person. This means it has to be reasonable to normal person in respect to the tax law.	The tax benefit is denied with penalties of 30% to 100% depending on disclosure, maybe criminal charges if fraud is also involved.

This appendix shows GAAR provisions outlined in their respective tax laws amongst the current and historical British colonized countries (amongst which U.S. declared their independence in 1776) (The Commonwealth, 2025). The above shows many similarities amongst the Commonwealth countries, which have their foundation based on the British

tax laws. However, U.S. who is no longer part of the Commonwealth has diversified and expended their GAAR regime to be vastly different from the rest.

(Note there are specific anti-avoidance provisions outlining special circumstances not discussed above.)

Appendix 3

List and Summary of all the Digital Tools IFAs can use for GAAR

Tool	Description	How it applies for GAAR investigations
CaseWare IDEA	A data analysis software to import, clean, and analyze data by using tools for sampling, stratification, gap detection, duplicates, trend analysis. It has an audit trail to record all actions for transparency and repeatability to generate reports on large volumes of data. (CaseWare Canada, 2024)	Excellent for internal and external auditing, data mining for business insights, compliance testing, and fraud detection. (CaseWare Canada, 2024)
Diligent (ACL Analytics)	An AI powered tool utilizing machine learning to facilitate analysis. It automates repetitive tasks for time savings while providing continuous monitoring and real-time insights. (Diligent, 2025)	This tool significantly enhances efficiency with the use of automated repetitive tasks, reduces risk of human error, and provides strategic, well-decision support. (Diligent, 2025)
EnCase	Utilizes multifaceted analytics including machine learning, behavioural analytics, and sandboxing to analyst known and unknown threats. It also supports collection and preservation of digital evidence in forensically sound formats ensuring integrity and admissibility of evidence in legal proceedings. (OpenText, 2025)	Ensures legal compliance and admissibility in collection and preservation of digital evidence. Benefits from machine learning, behavioural analytics and sandboxing to enhance detection capabilities of suspicious trends. (OpenText, 2025)
FTK	Utilizes advanced data visualization including timelines, cluster graphs, and pie charts to determine relationships in data and identify key pieces of information. Parses and extracts emails for comprehensive email analysis. Facilitates discreet investigations using remote	Enables investigators to recover, analyze, and generate advanced data visualizations (Exterro, 2025). This is particularly effective for the presentation of data in legal proceedings. Additionally, it enables comprehensive email analysis to analyze email content and metadata efficiently to find

	collection capabilities and includes memory analysis enabling investigators to enumerate running processes, analyze hidden processes, and recover artifacts from memory dumps (Exterro, 2025).	possible mens rea or reasoning behind company actions.
Tableau	An industry leading data visualization and business intelligence tool that transforms raw data into interactive dashboards and reports (Tableau, 2025)	Enhances decision making by providing clear and interactive visualizations based on data-driven insights (Tableau, 2025). Increases efficiency of data preparation and analysis with its intuitive interface and automation features.
Neo4j	A leading graph database platform to analyze highly interconnected data by enabling users to store, analyze, and visualize complex relationships between data points (Neo4j, 2025). It achieves this by utilizing real-time analytics, graph algorithms, data visualization, and cypher query language designed for querying graph databases.	Provides better insights from relationships by representing data as a graph (Neo4j, 2025). Increased efficiency in querying performance, particularly for deeply connected data. It is particularly useful in GAAR context when establishing and drawing insights between datapoint relationships (Neo4j, 2025).
Connect	Integrates data from multiple sources including tax returns, financial records and other government databases, uses risk profiling, advanced analytics including datamining, statistical models, and machine learning to identify fraudulent activity, hidden assets, and uncover non-compliance (Abbas, 2025). It also has real-time functions to improve its ability to detect and respond to suspicious activities. Lastly, it automates several processes including cross-referencing data and flagging potential cases.	It's aggregation of vasts amounts of data enable its ability to identify hidden assets and fraudulent activity. Automated processes also increase efficiency by reducing administrative work and enabling more time spent on analysis, and allows for better resource allocation by focusing on higher risk cases. (Abbas, 2025)

Alteryx	Enables users to connect to, manipulate, analyze, and visualize data without needing extensive coding skills (Alteryx, 2025). This tool integrates with other tools such as Tableau, R, Python, and cloud platforms like AWS and Google Cloud. It also uses Machine Learning & AI and automates workflows.	Alteryx drastically reduces the time needed to prepare and analyze data, allowing users to focus more on insights and decision making. This tool is also flexible and integrates other tools and databases for enhanced data analysis. (Alteryx, 2025)
Python/R programming languages	Python is an excellent tool for data extraction and manipulation and can enable an experienced technical user to collect and clean data from multiple sources, including qualitative data, which is particularly useful for network/association analysis (IBM, 2021). R excels at statistical analysis and can be used to build predictive models that identify patterns in tax avoidance schemes. R can also conduct network analysis through analyzing relationships between entities and visualize connections in large datasets, particularly for complex tax avoidance structures (IBM, 2021).	Each tool is highly effective in their respective ways in various stages of a GAAR investigation. This enables an investigator to identify anomalies and patterns associated with tax avoidance.
Palantir	A powerful data integration and analytics platform for complex data environments to integrate, manage, and analyze vast amounts of structure and unstructured data for better decision making (Palantir, 2025). It ingests data from diverse sources and maintains data lineage and provenance to help users understand where the data comes from and how it's transformed. It also uses AI and advanced analytics to	The flexibility of this tool enables a team of technical and non-technical users identify patterns and cases related to a GAAR investigation (Palantir, 2025). As noted above, an investigation may require a plethora of individuals with different skillsets and Palantir can cater to both types of individuals. This tool focuses on real-time decision making, crucial for fraud detection by rapidly turning complex data

	perform deep analytics and supports technical and non-technical users.	from various sources into actionable insights.
IBM i2 Analyst's Notebook	It is a visual intelligence and investigative tool to uncover hidden connections, patterns, and trends in complex data (i2, 2025). It visually maps relationships between people, objects, places, and events; identifying networks, hierarchies, and communication patterns. It also utilizes temporal and geospatial analysis enabling an analyst to identify patterns through sequential and spatial events.	This tool's ability to focus on trends and connections to proactively identify a possible result makes it a unique tool for GAAR investigations as it can identify specific actions or patterns through temporal analysis that may suggest tax avoidance such as the sudden increase in creation of artificial losses or a flow of funds such that it leads to a certain, but similar event (i2, 2025). This can also be used for decision making based on the results or conclusions drawn from the analysis.
SAS Fraud Framework	An enterprise level solution designed to detect, prevent, and manage fraud leveraging advanced analytics, machine learning, and real-time decision making to identify and prevent fraud (SAS, 2025). Advanced analytics and machine learning improve the identification of fraudulent activities.	This tool is designed to identify fraud and minimize false positive using advanced analytics and machine learning, which would better assist an analyst in identifying tax avoidance if patterns of behaviour, flow of funds through a temporal and geospatial analysis are identified through machine learning (SAS, 2025). Real-time decision making enables governments to identify possible tax-avoidance behaviour before the taxable event has occurred.

Appendix 4

Tax Avoidance vs Tax Evasion Comparative (IRS, n.d.)

	Tax Evasion	**Tax Avoidance**
Definition	The failure to pay or using deliberate methods to underpay income taxes.	The use of legal methods or strategies to minimize tax liabilities. The methods and strategies are aggressive and not aligned with the intent, purpose and object of the respective provision in the tax law.
Compliance with the tax law	This is the non-compliance with provisions of the tax law.	On prima facie, compliant but the methods and strategies are aggressive and not are aligned with the intent, purpose and object of the respective provision in the tax law.
Methods	Underreporting income, overstating expenses and deductions, and concealment of funds and assets.	The strategic manipulation of complex transactions and structures to greatly optimize tax savings to an extent that is abusive in nature.
Legality	illegal	legal
Penalties in Canada	Any deliberate non-compliance with any respective tax law could result in fines and penalties, criminal charges and imprisonment. In Canada- paying up to full amount of taxes owning, plus interest and civil penalties assessed by the CRA, up to 200% of taxes evaded and up to 5 years in jail (CRA, 2025c).	Any tax benefit would be denied, and tax liability would be reassessed. Addition penalties could result as a percentage of the deemed tax benefit from the avoidance scheme or transaction. In Canada- Denial of the tax benefit. Additional penalty starting in 2024 of 25% penalty on the amount of the denied tax benefit. (Doane Grant Thornton, 2024).

Profile of offenders (CRA, 2024b and 2025c)	Demographic: These include cash intensive businesses such as construction companies, restaurants and grocery stores are prone to evasion by under reporting cash transactions and operating without good accounting records. Wealthy individuals can also be offenders who might participate in illegal activities such as money laundering, hiding assets or failing to report revenue appropriately. Also, they often falsify documents and engage in direct concealment of their actions. Offenders: Anyone that wants to deliberately deceit to avoid tax liabilities and obtain tax benefit. These are individuals or entities are not compliant with the required tax laws, whether it was intentional or not. There are specific cases, where people might be unaware that they must disclose and file specific returns. These result in usually penalties for non-compliance rather than criminal charges.	Demographic: Individual or entities with high net worth or publicly listed corporations, who have more access to tax professionals and advisors who can craft tax avoidance schemes, such as shell companies and offshore trusts, etc. They often exploit differences in tax rates from multiple jurisdictions, shifting assets and funds from high to low taxation countries. Offenders: Trained and experienced tax professionals and advisors with the aid of legal counsel. The schemes are generally very creative and on prima facie is in compliance with the provision of the tax law but frustrates the intent, object and purpose of the provisions.