

# **General Anti- Avoidance Rule (GAAR): An Option to Tackle Aggressive Tax Planning in Indonesia**

Niken Evi Suryani, Monash University, niken.suryani@monash.edu

Keywords: aggressive tax planning, tax avoidance, general anti-avoidance rules (GAARs), specific anti-avoidance rules (SAARs), international tax

Globalization has encouraged many enterprises to expand their operations into other countries, resulting in direct foreign investment from developed countries to developing countries. While some efforts have been made to lure foreign direct investment (including multinational enterprises/MNEs), it is arguable whether that investment has resulted in a fair tax contribution. In 2005, the Indonesian Minister of Finance revealed that many MNEs paid no taxes at all in Indonesia because they had continuously reported losses and yet they appeared to be in no danger of bankruptcy. The losses were suspected to be connected with highly sophisticated and aggressive tax planning strategies. It is likely that aggressive tax planning will become more widespread among taxpayers, especially MNEs which are able to afford expert tax planners. A number of studies have explored aggressive tax planning practices in developed countries, for example the United States of America and Australia. There are fewer studies that have examined aggressive tax planning in developing countries such as Indonesia and those studies have concluded that the SAARs in Indonesia have been inadequate in dealing with inappropriate tax-related practices. This raises the issue of whether a GAAR should be introduced for tackling aggressive tax planning in Indonesia which is the aim of this thesis.

In particular, this thesis' subsidiary research questions are; first, is aggressive tax planning a problem in Indonesia; second, are Indonesian anti-avoidance rules sufficient to combat aggressive tax planning; third, what benefits will Indonesia receive if a GAAR is introduced; fourth, what challenges are there in implementing a GAAR in Indonesia; and fifth, what features should an Indonesian GAAR possess. To answer those questions, initially, archival research will be employed in identifying and analysing aggressive tax planning schemes in tax court decisions followed by qualitative research involving interviewing key informants from the Directorate General of Taxes (Indonesian tax authority), tax court judges, tax managers, and tax advisors. Finally, this thesis will employ legal research involving a comparison of various elements of GAAR models in both civil law and common law jurisdictions. The data gathered from the interviews will provide a comprehensive picture from all key stakeholders in Indonesia with regards to enacting a GAAR.

By adopting this mixed-method approach, it is envisaged that both the reliability and the validity of the research findings will be enhanced. This thesis will make a significant contribution, not only to the academic literature, but also to Indonesian tax policy in the context of making recommendations to Indonesia's government to support the fairness and the integrity of its tax system.