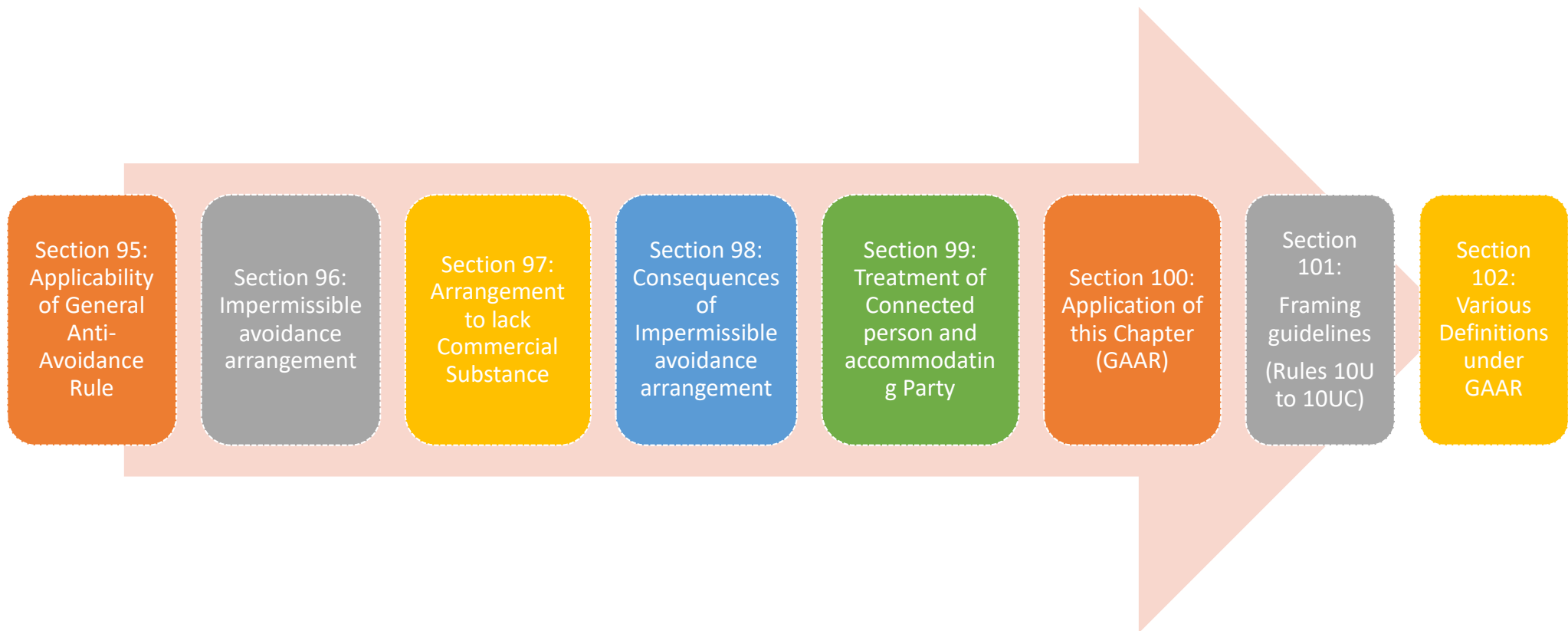


*Presentation at  
Study Circle Meeting of the Chamber of Tax Consultants  
on  
Issues in Clause 30C & Clause 44 of Tax Audit Report*

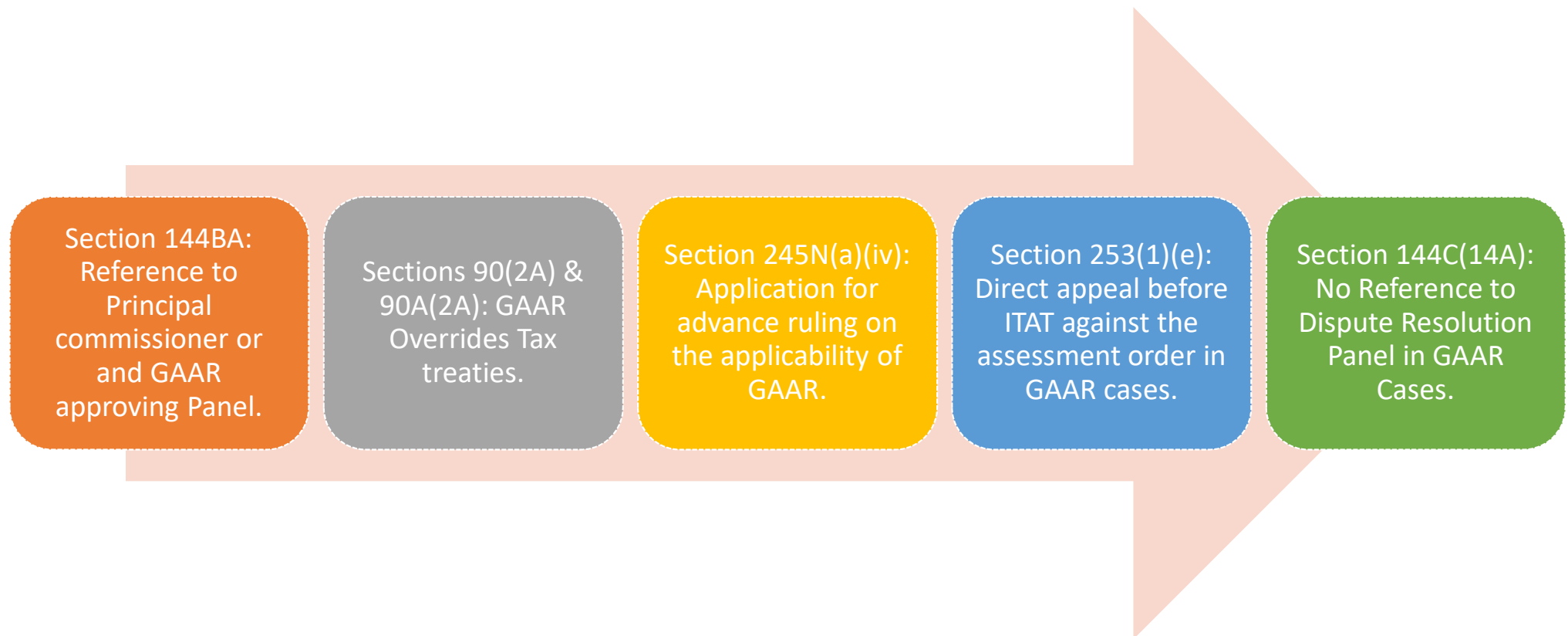
*The Interplay of GAAR & Clause 30C of Form  
3CD of the Tax Audit Report*

*Presentation by Dr. CA. Mayur B. Nayak*

# *Legislative framework of GAAR*



# *Legislative framework of GAAR*



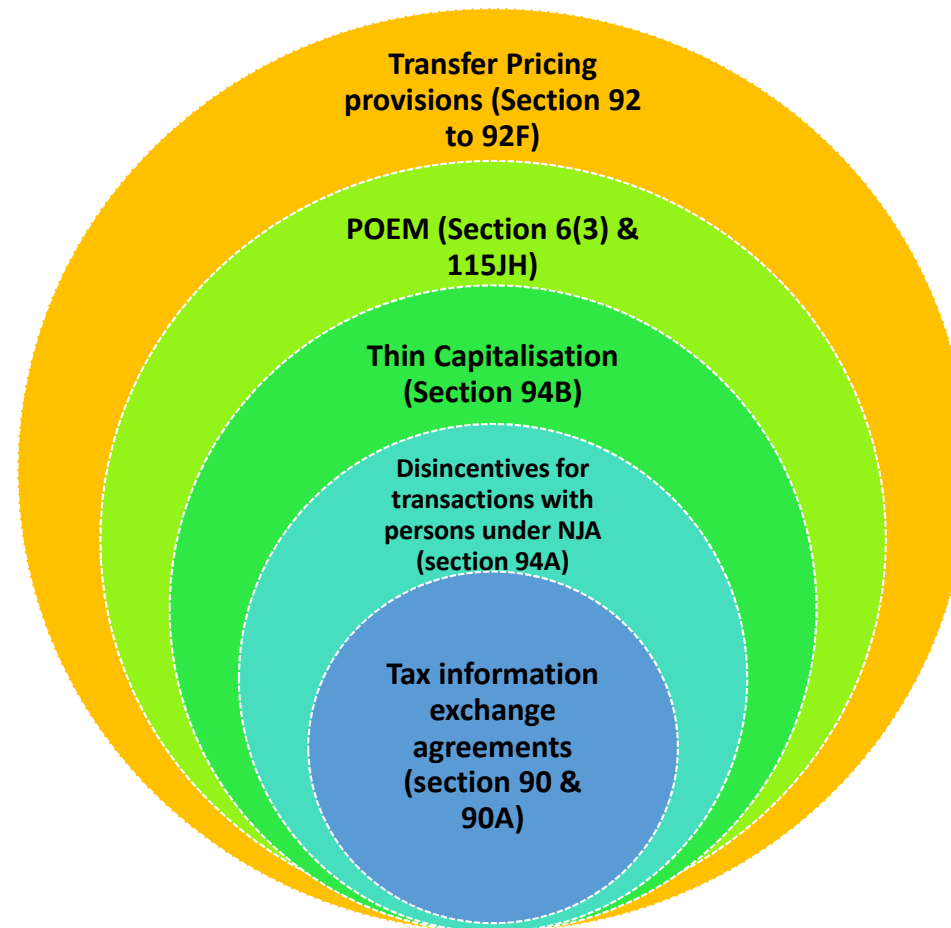
# *GAAR Road map & Clause 30C applicability*



## *Legislative framework of GAAR*

<b>Rules</b>	<b>Description</b>
<a href="#"><u>10U</u></a>	Chapter X-A (GAAR) not to apply in certain cases
<a href="#"><u>10UA</u></a>	Determination of consequences of Impermissible avoidance agreement
<a href="#"><u>10UB</u></a>	Notice, and forms for reference under Sec. 144BA
<a href="#"><u>10UC</u></a>	Time Limit for various stages of assessment procedure in GAAR Cases

# *List of SAAR under Indian Tax laws*



# Definitions

## ***Tax Planning***

It involves planning in order to avail of all exemptions, deductions & Rebates provided in the Act.

The Income Tax law itself provides various methods for Tax planning.

## ***Tax Avoidance***

It means reducing tax liabilities by interpreting treaties and provisions of the Income Tax act by ignoring the Spirit of Law.

There is a thin line of difference between Tax avoidance & Tax Planning.

## ***Tax Evasion***

It is an illegal method to reduce Tax liability.

For e.g. Claim Bogus Expenses

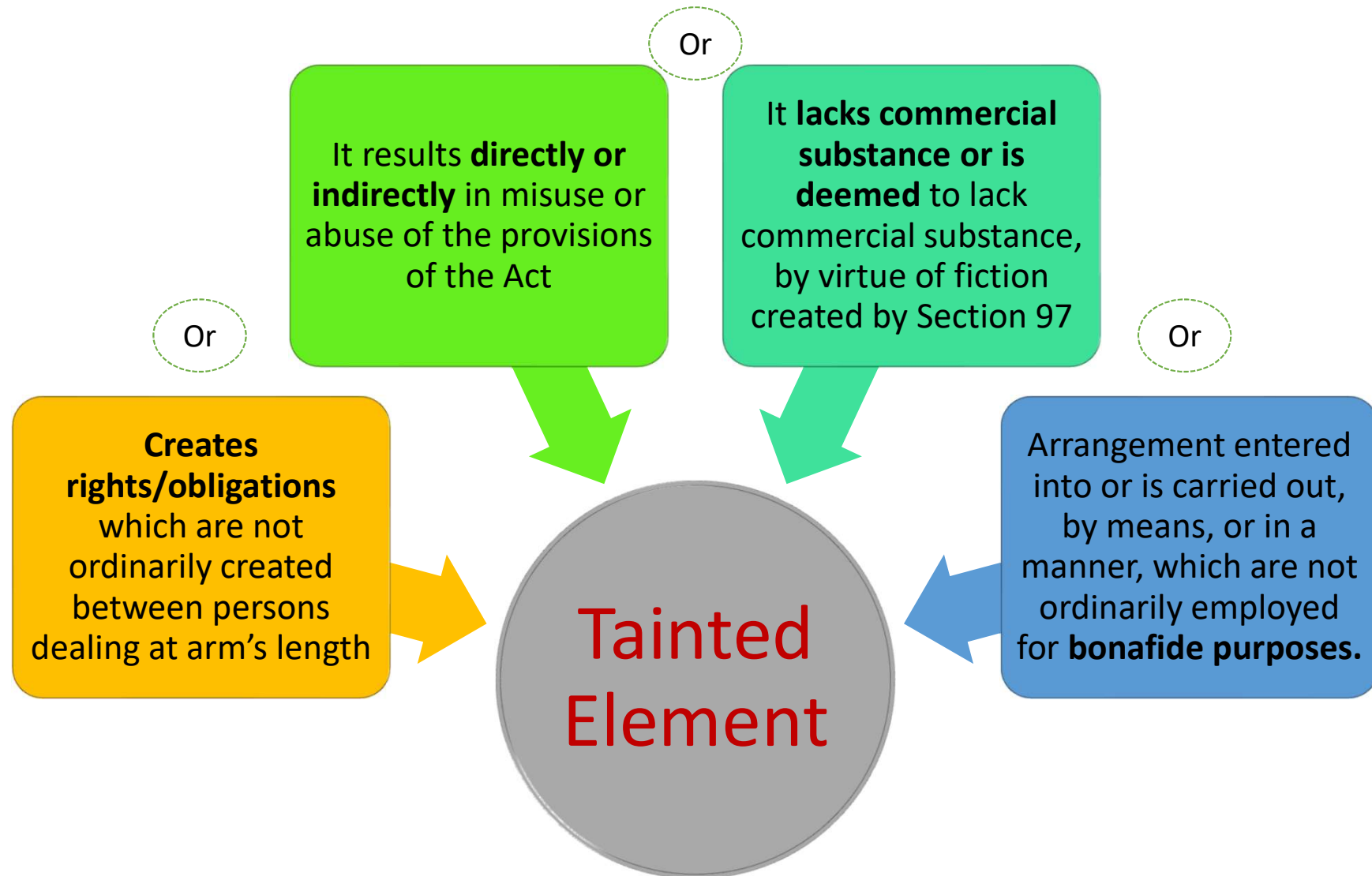
Falsification of accounts

Non-compliance with rules and regulations of the Act.

*An Arrangement is to be treated as an Impermissible avoidance arrangement under section 96 of the Act if:-*







## *Definition of arrangement (Section 102)*

- "arrangement" means any step in, or a part or whole of, any transaction, operation, scheme, agreement or understanding, whether enforceable or not, and includes the alienation of any property in such transaction, operation, scheme, agreement or understanding;

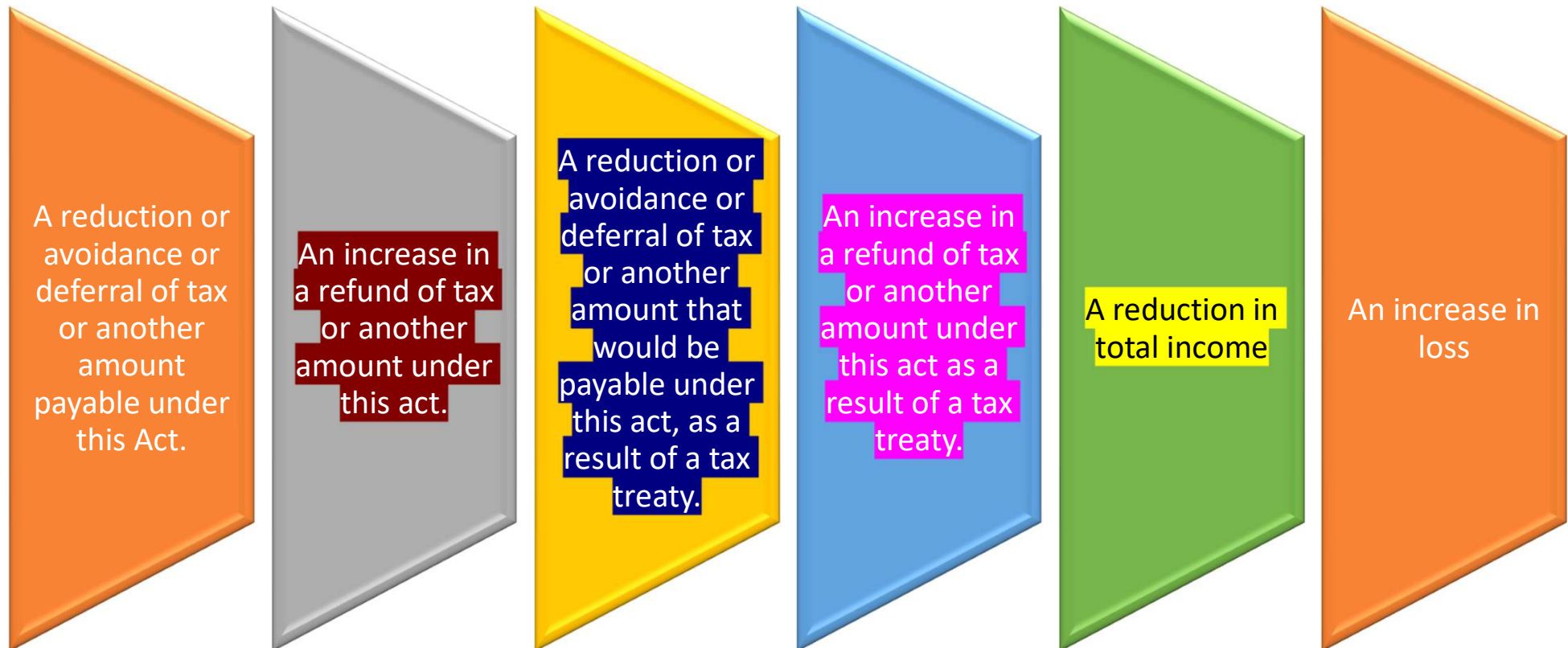
## *Definition of Step (Section 102)*

- "step" includes a measure or an action, particularly one of a series taken in order to deal with or achieve a particular thing or object in the arrangement;

# *Definition of Connected Person (Section 102)*

- "connected person" means any person who is connected directly or indirectly to another person and includes,—
  - (a) any relative of the person, if such person is an individual;
  - (b) any director of the company or any relative of such director, if the person is a company;
  - (c) any partner or member of a firm or association of persons or body of individuals or any relative of such partner or member, if the person is a firm or association of persons or body of individuals;
  - (d) any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family;
  - (e) any individual who has a substantial interest in the business of the person or any relative of such individual;
  - (f) a company, firm or an association of persons or a body of individuals, whether incorporated or not, or a Hindu undivided family having a substantial interest in the business of the person or any director, partner, or member of the company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member;
  - (g) a company, firm or association of persons or body of individuals, whether incorporated or not, or a Hindu undivided family, whose director, partner, or member has a substantial interest in the business of the person, or family or any relative of such director, partner or member;
  - (h) any other person who carries on a business, if—
    - (i) the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or
    - (ii) the person is a company, firm, association of persons, body of individuals, whether incorporated or not, or a Hindu undivided family, or any director, partner or member of such company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member, has a substantial interest in the business of that other person;

## *Meaning of “Tax benefit”. (Sec 102)*



## *Clause 30C of Form 3CD*

Whether the assessee has entered into an impermissible avoidance **arrangement**, as referred to in section 96, during the previous year? (Yes/No)

If Yes, Please specify:-

Nature of the Impermissible avoidance arrangement:

Amount (In Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement.

*Non-applicability  
Of GAAR Provision  
(Rule 10U)*

1. Where tax benefits does not exceed three crore rupees in aggregate to all the parties in the R.A.Y. (excluding interest & Penalty)

2.FIIs not availed of treaty benefits & invested in securities in accordance with the relevant regulatory body as may be applicable.

3. Investment made by Non-Resident by way of Offshore derivative instrument or otherwise in FIIs.

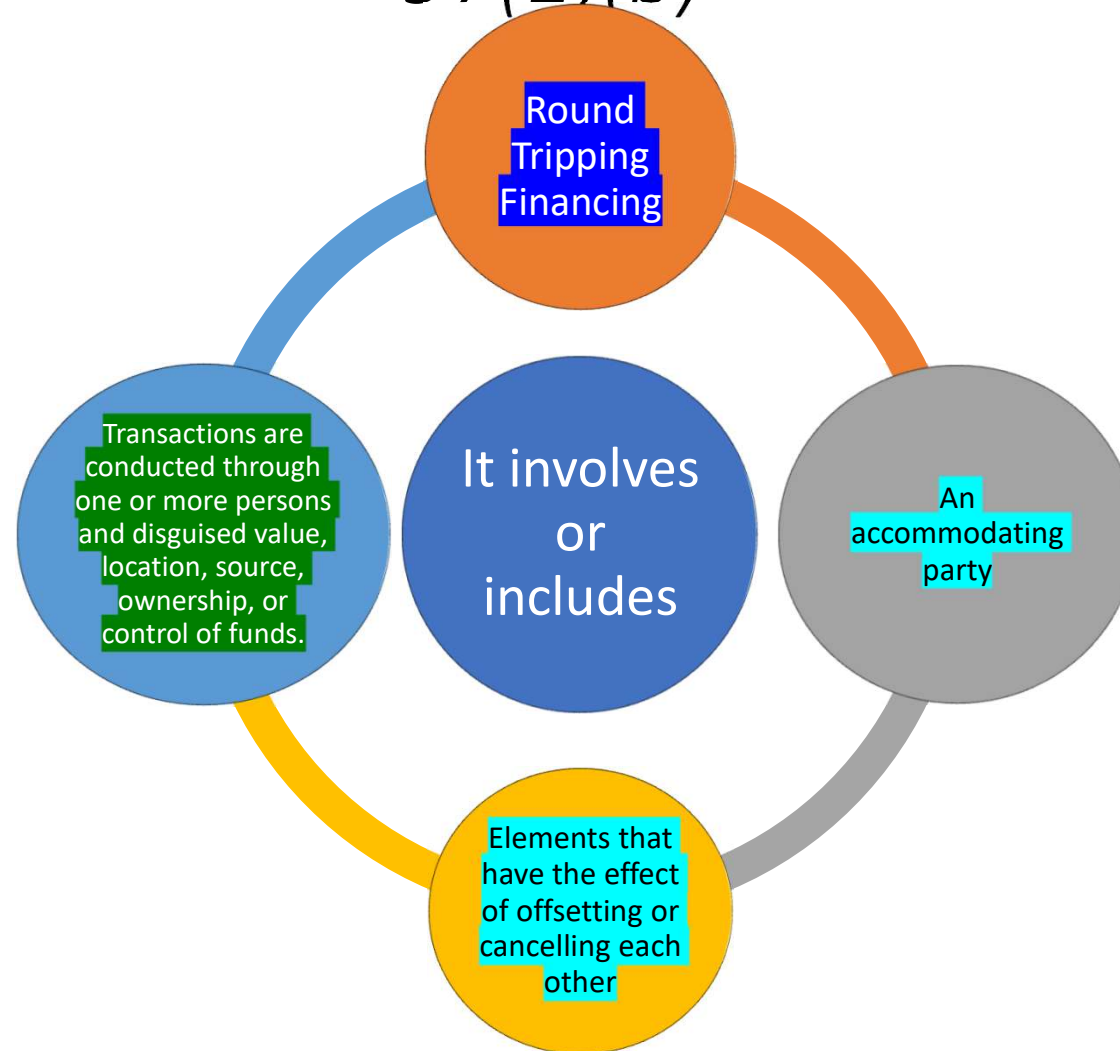
4. Any Income arising prior to 1<sup>st</sup> April 2017.

## *Arrangement to lack commercial substance* *(Sec 97(1)(a))*

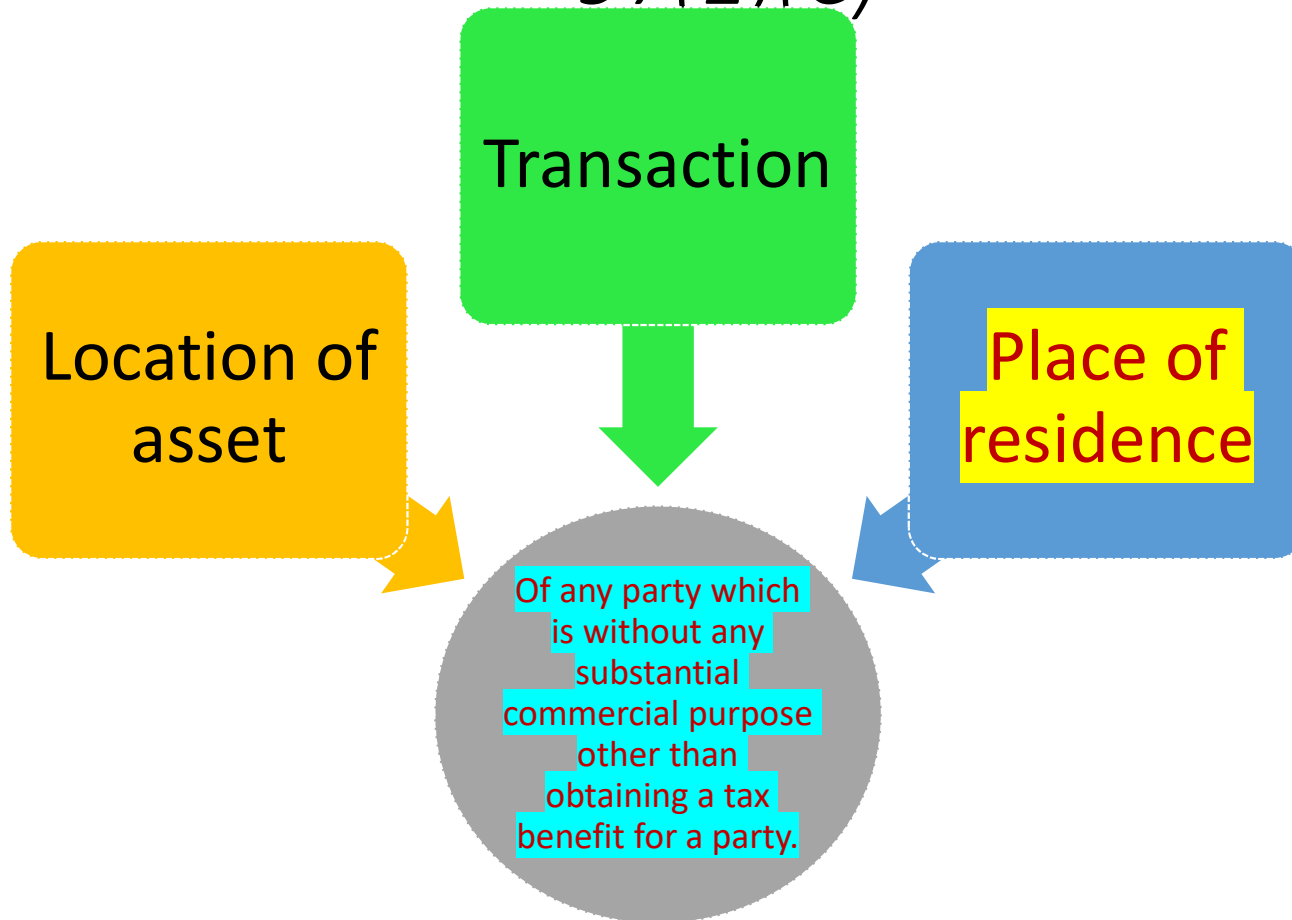
- ❑ the substance or effect of the arrangement as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part;



# *Arrangement to lack commercial substance (Sec 97(1)(b))*



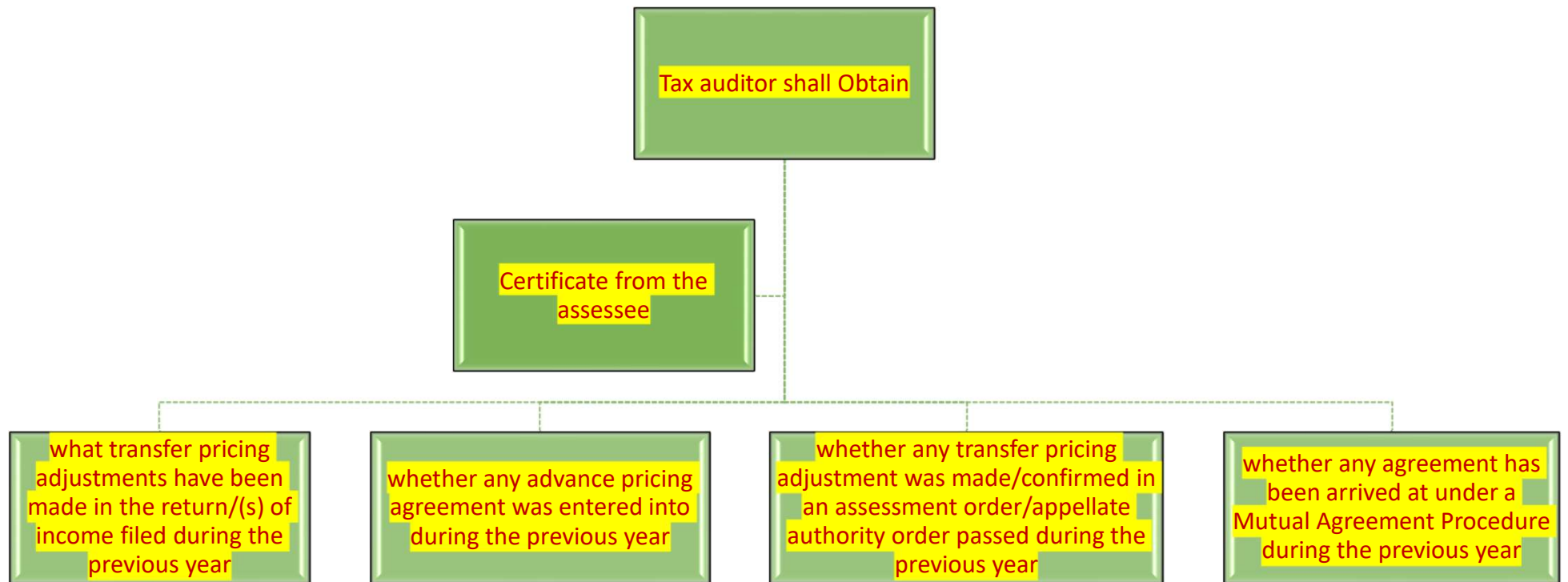
# *Arrangement to lack commercial substance (Sec 97(1)(C))*




## *Arrangement to lack commercial substance (Sec 97(1)(d))*

- ❑ It does not have a significant effect upon the business risks or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained (but for the provisions of this Chapter).

# *Written representation from assessee*

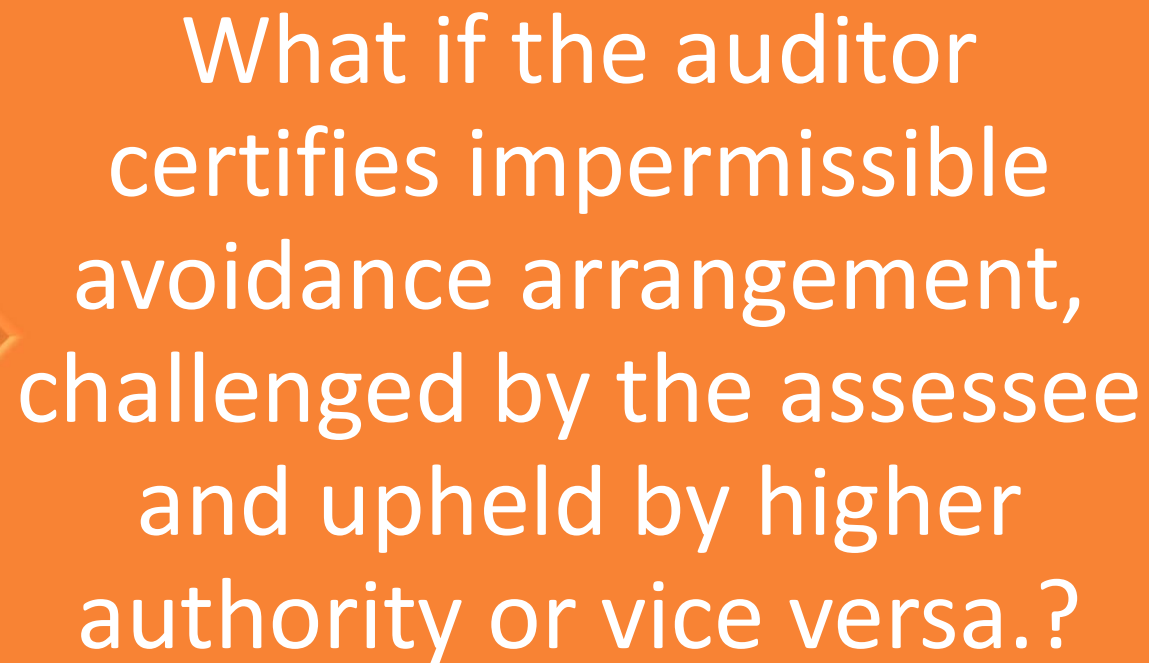


## *Issues under Consideration*



Whether GAAR reporting  
under transfer pricing  
and tax audit Clause 30C  
mutually exclusive?

## *Issues under Consideration*

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What if the auditor  
certifies impermissible  
avoidance arrangement,  
challenged by the assessee  
and upheld by higher  
authority or vice versa.?

## *Issues under Consideration*

GAAR shall be applicable if tax benefits exceed Rs. 3 crores or more, however, if tax benefits are less than the prescribed limit then reporting shall be applicable.



## *Disclaimer of Opinion*

- “In the absence of access to the books of account and other records of various parties to arrangement and want of elaborate investigations beyond the ordinary process of audit involved in determining whether the arrangement is an impermissible avoidance arrangement, and in determining the tax benefit in the assessment year relevant to the previous year under audit arising, in aggregate, to all the parties to the arrangement, we are unable to determine the view of the assessee regarding its/his entrance into any impermissible avoidance agreement as contemplated under section 96 of the Act, during the previous year”



Thank  
you!