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Toolkit for the design and effective Implementation of Domestic and International General Anti-Avoidance Rules: [Emphasis on the Caribbean]

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Toolkit for the design and effective Implementation of Domestic and International General Anti-Avoidance Rules

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GLOBTAXGOV
A NEW MODEL OF GLOBAL GOVERNANCE IN INTERNATIONAL TAX LAW MAKING



European Research Council
Established by the European Commission

General concept of the legislation

- These rules are created in the interest of protecting the tax system and its correct application.
- In accordance with the international context, they constitute the last resort applicable for those cases in which a very low level of taxation or the total avoidance of tax is achieved through legal means.
- These are general rules that allow the tax authority to ignore or re-characterize elusive/abusive transactions.
- Described based on 4 elements:
 - Taxpayer carrying on actions that are permitted by law
 - with the intention to minimize taxes
 - while complying with disclosure obligations
 - choosing an atypical manner to achieve its economic goals.

Structure of the Toolkit

Making the decision

Use of the GAAR

Deciding on the introduction of a GAAR

Transversal chapter: Risk assessment

Managing the introduction process

Designing the clause

Applying the clause in practice

Determine the size of the problem.

Tools already implemented.

Additional considerations.

Knowing the schemes to fight against.

Indicators of taxpayer behavior.

Incentives of the system to commit abusive practices.

Creating a memorandum.

Making a time table.

Integrating the standard into the existing tax system.

Local practice (cases, schemes to be fought).

Learning from others' experiences.

Examples of standards at the international level.

Concepts with which a general anti-avoidance rule is composed.

Other considerations of the design of the GAAR.

Capacity.

Internal procedure - responsibilities.

Databases.

Communication with the taxpayer.

Public guidance on GAAR.

Dispute resolution process.

* Examples and summary of each section.

Scenario 1: Considering to introduce a GAAR

Problem: Domestic Rules for exchange of information were implemented. With the information obtained it was identified that there is an aggressive tax planning scheme that involves one of the double tax treaties signed by the country.

Options to explore found in the GAAR Toolkit

- **3. Risk assessment** / three areas of assessment.
- **3.1 Acquiring knowledge about tax avoidance schemes** / Tax avoidance cases in other countries, where to find public information on aggressive tax planning, data bases of judgements invoking a GAAR

Figure 2 Three areas of risk assessment



Source: The authors

Situation 2: Protecting treaties with GAARs

Problem: Treaty network of few treaties and foreign investment is channeled through one of them. The country is not participating in the MLI. There is no budget to renegotiate this treaty.

Is it possible to use the Toolkit to promote treaty modification?

Yes, the sections below are relevant:

- **2.2 Treaty GAARs** - When does a treaty create opportunities for avoidance? Is it enough to follow the international guidelines? It is valid to invest efforts in negotiating the GAAR against other clauses.
- **3.2. Indicators of tax avoidance in macro and micro data**
- **3.3.2 Risks in tax treaty networks**

Situation 2: Protecting treaties with GAARs

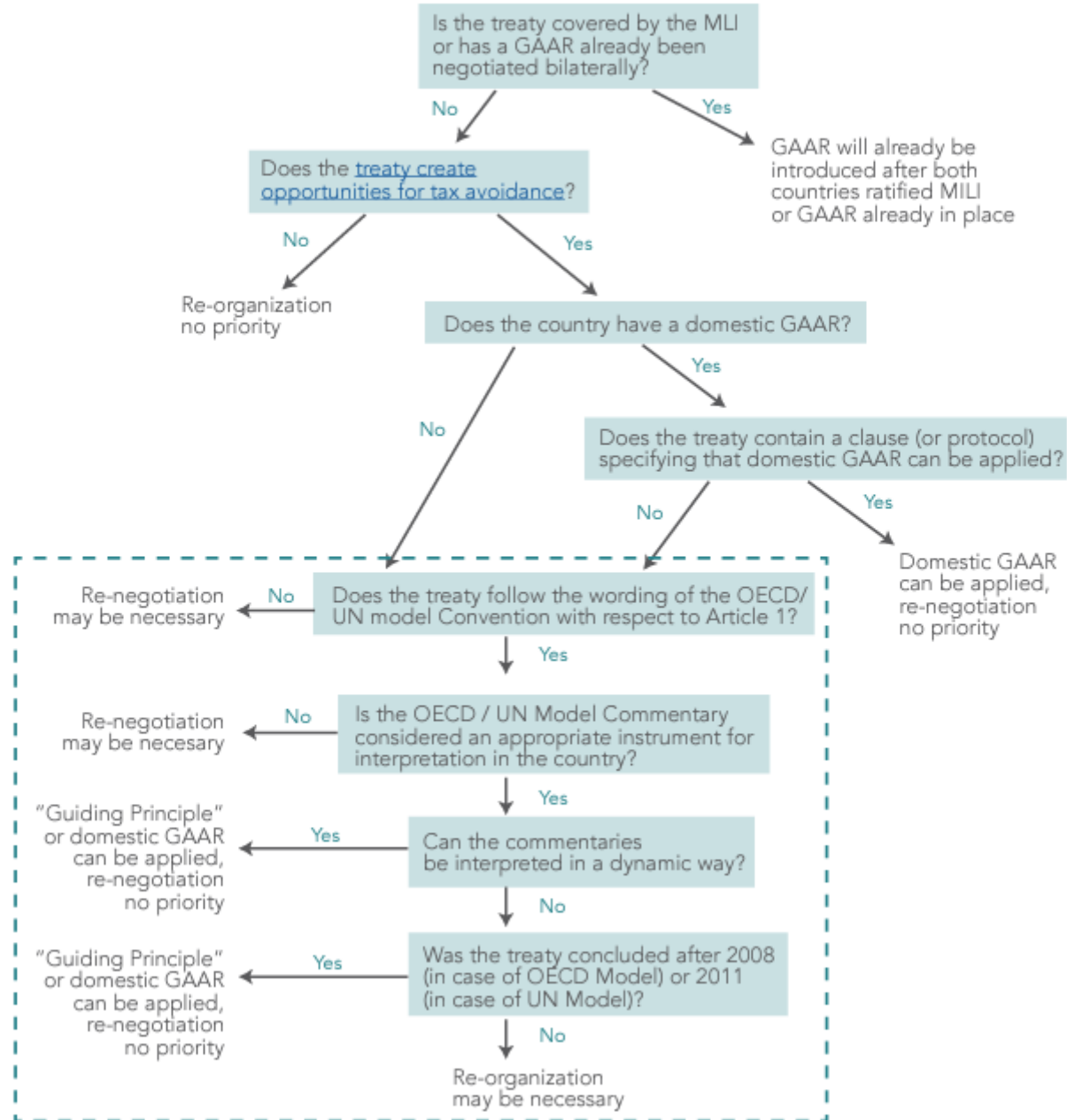
What should be done with the remaining treaties? Should these be modified?

To evaluate this point in addition to resorting to the information on avoidance schemes indicated in section **3.1.1 Tax avoidance cases in other countries**.

An evaluation of those treaties that are not covered by the MLI can be made according to the points of section **2.2. Treaty GAARs** and its flowchart (Figure 1).

Figure 1

Assessing which tax treaties should be re-negotiated bilaterally to protect against tax avoidance



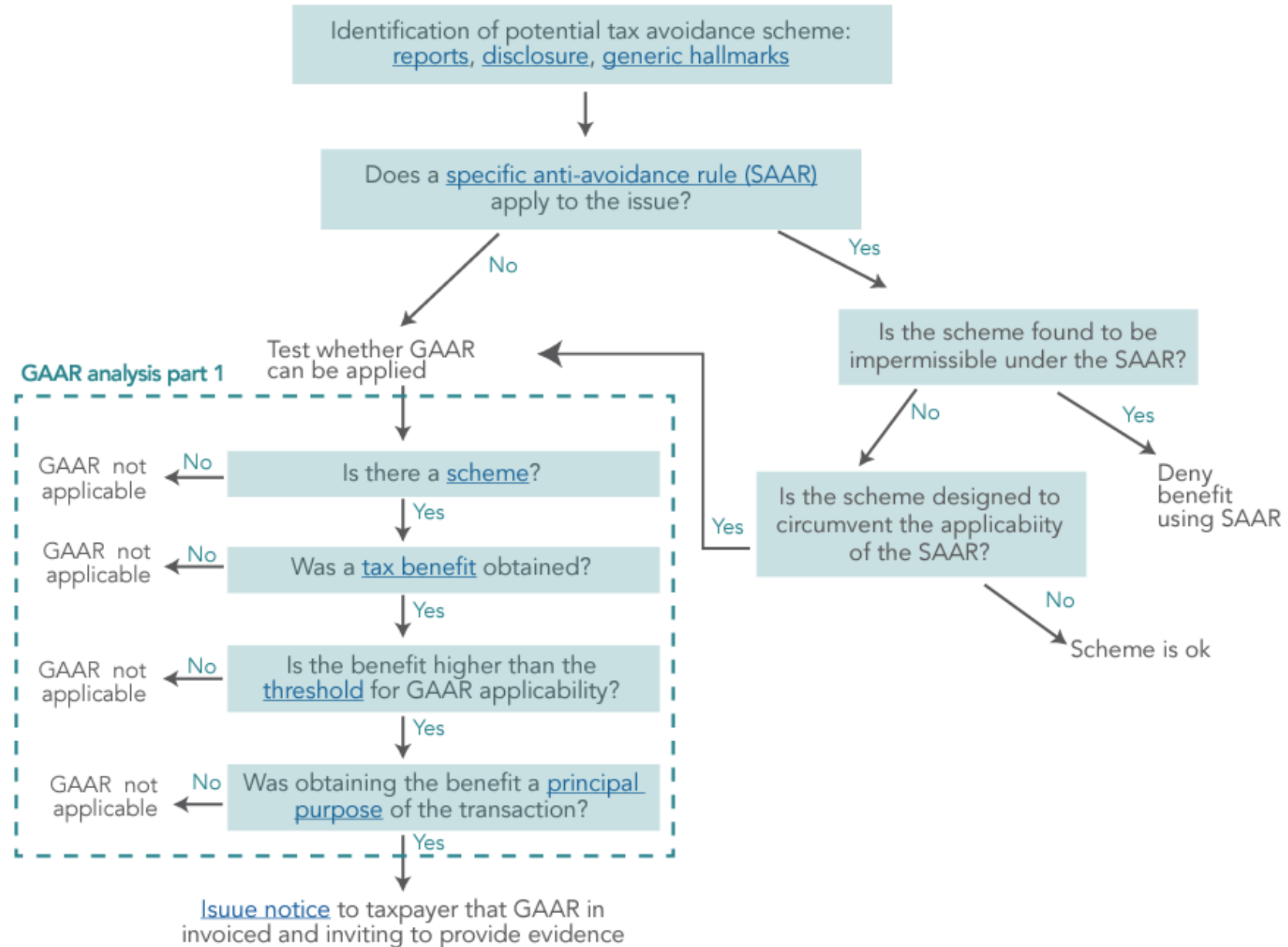
Situation 3: Clarify the internal procedure

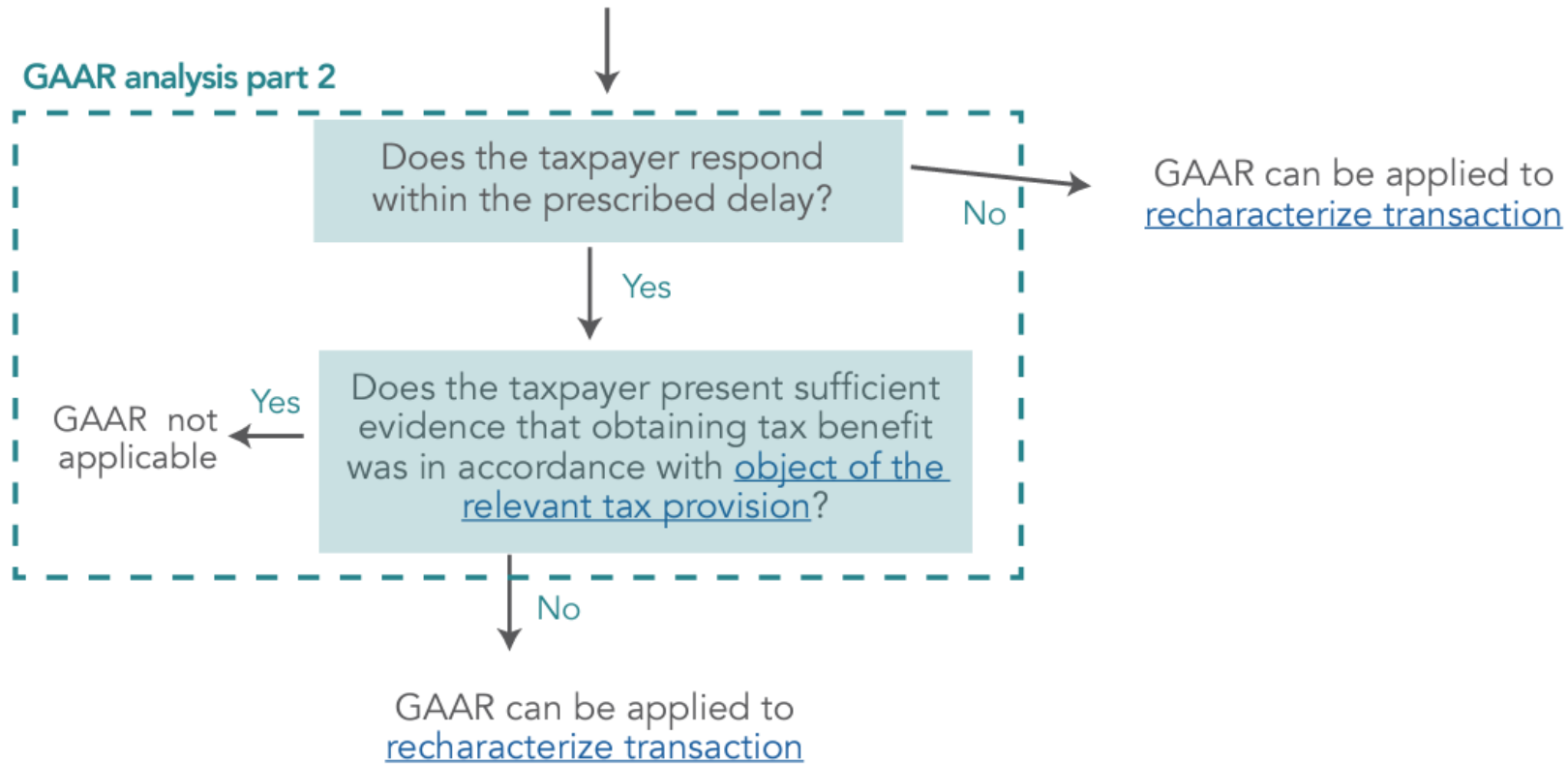
Problem: The application of the GAAR is different between units of the administration.

Options to explore found in the GAAR Toolkit

- **6.2.2 Assessment procedure** – Flowchart
- **6.3.1. General guidelines and explanations about GAAR** - Generation of trust with the taxpayer and publications.

Figure 5 Generic GAAR analysis procedure





Thank you very much!

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