

Tax Anti-Avoidance Measures – The Limits of the Law
by **Dr. Nigam Nuggehalli**
Azim Premji University, Bangalore

Chaired by Associate Professor Gary F. Bell, Faculty of Law, NUS

19 April 2017, Wednesday, 12.00pm – 1.30pm

Lee Sheridan Conference Room, Eu Tong Sen Building, NUS (Bukit Timah Campus)

ABSTRACT

Tax anti-avoidance measures impose *status over contracts* i.e. they decide the legal nature of a business relationship regardless of the purported relationship under the contract. Two strategies are used by governments to impose status over contracts. First, governments introduce deeming provisions in tax statutes to ensure that status dominates contracts through a legal fiction. In some instances, governments make such deeming provisions retrospective in nature, thus impacting contractual arrangements made by parties who were unaware of, and therefore unprepared for, the deeming provisions that changed their legal position. Second, if the first strategy fails, governments recharacterise the contractual relationship using a broad spectrum set of rules called 'General Anti-Avoidance Rules' or GAAR. Over the last decade, the Indian government has used both these strategies in its anti-avoidance measures in the area of international taxation. I will describe the Indian story of status v contract through four areas of controversy: permanent establishments, FTS (Fees for Technical Services) & Royalty, capital gains and transfer pricing. The area of permanent establishments demonstrates the dominance of contracts over status. However, some recent judicial decisions in this area demonstrate the susceptibility of contract to status-related arguments. The areas of FTS & Royalty as well as the area of capital gains and transfer pricing demonstrate the Indian government's attempt to establish, through legislation, the dominance of status over contract. The GAAR is the last throw of the dice in the status v contract battle.

ABOUT THE SPEAKER



Dr. Nigam Nuggehalli is an Associate Professor in the School of Policy and Governance at Azim Premji University, Bangalore, where he has worked since May 2014 after moving from London, United Kingdom. Previously, he was a Principal Lecturer teaching law and jurisprudence at BPP Law School, London where he worked for the six years. Before joining academia, he worked as a tax lawyer in New York, and he is a member of the New York Bar and the India Bar (Karnataka). Dr. Nuggehalli holds a DPhil in legal philosophy from the University of Oxford Faculty of Law and a BA., LLB (Hons.) from the National Law School of India University, Bangalore. Dr. Nuggehalli's broad research interests lie in the legal and philosophical foundations of development. As a lawyer and as a law academic, he has practiced and taught a variety of legal subjects (contracts, commercial law, corporate law, taxation) with reference to the legal regimes in the United States, the United Kingdom and India. As a political philosopher, he has taught legal and political theory at Oxford (as a graduate teaching assistant) and at BPP Law School (as the module leader for their legal theory course). At Azim Premji University, he teaches courses for post-graduate students on political philosophy, law and justice, and the philosophical basis of political institutions. His DPhil thesis at Oxford was in the area of political and legal philosophy and the implications of these fields for judicial reasoning.

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REGISTRATION

There is no registration fee for this seminar but seats are limited.

Light lunch will be provided on a first-come, first-served basis.

Closing Date: **12 April 2017, Wednesday**

For enquiries, please contact Melinda Tan at asli@nus.edu.sg