

PART IVA

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CONTENTS

1. History of anti-avoidance provisions
2. Effective commencement
3. Requirements of provisions
4. Development of case law
5. Current position & planning
6. Penalties & GIC
7. Questions

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1. ANTI-AVOIDANCE HISTORY

1. Section 260
2. 'Sham' transactions
3. Part IVA
4. Specific anti-avoidance provisions

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1.1 SECTION 260

Weaknesses of this legislation included:-

1. Annihilated transactions without ability to reconstruct
2. Required more than one party to the arrangement
3. Choice principle made legislation ineffective
4. Success in PSI cases

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1.2 "SHAM" TRANSACTIONS

1. Appearance or guise of a transaction
2. What was attempted to be achieved is not achieved due to defective documentation and actions
3. No legal effect
4. The alleged arrangement is ignored or undone

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1.3 PART IVA

1. Schemes to avoid tax
2. Dividend stripping
3. Other arrangements

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1.4 SPECIFIC ANTI-AVOIDANCE PROVISIONS

- 1. Too numerous to count & include:-**
 - Division 7A
 - Value shifting provisions
 - Dividend streaming provisions
 - Carry forward loss rules
 - 45 Day holding rule
 - Section 100A
 - Debt Forgiveness rules
 - Division 149 & Section 104-230
- 2. Interaction of anti-avoidance rules**

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2. PART IVA - EFFECTIVE COMMENCEMENT

- 1. Enacted in 1981**
- 2. Initially applied sparingly**
- 3. Significant cases now**
- 4. Evolved as practices evolved**

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3. REQUIREMENTS OF PROVISIONS

- 1. Common terminology**
- 2. General operation**
- 3. Tax Benefits**
- 4. Withholding tax avoidance**
- 5. Schemes**
- 6. Stripping of company profits**
- 7. Creation of franking debits or cancellation of franking credits**
- 8. Cancellation of franking credits – consolidated groups**
- 9. Cancellation of Tax Benefits**
- 10. Amendment of assessments**
- 11. Amendment of foreign tax credit determinations**

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3.1 COMMON TERMINOLOGY

- **Scheme**
- **Capital loss**
- **Foreign tax credit**
- **Taxpayer**
- **Carrying out a scheme**
- **Person carrying out a scheme**

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3.2 GENERAL OPERATION

Overrules all of sections except:-

- 1. Income equalisation deposits**
- 2. Farm management deposits**
- 3. International tax agreements**

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3.3 TAX BENEFITS

- **Definition of benefit**
 - Exclusion of assessable income
 - Allowance of a deduction
 - Obtaining a capital loss
 - Obtaining a foreign tax credit
- **Unless arises from legitimate election or choice**

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3.4 WITHHOLDING TAX AVOIDANCE

- **No withholding tax payable**
- **Would be apart from scheme**
- **Tax benefit is the withholding tax saved**

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3.5 SCHEMES TO WHICH PART IVA APPLIES

1. **Actual legislation**
2. **Scheme**
3. **Intention to get a tax benefit**
4. **A dominant purpose**
5. **Eight criteria to consider**

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3.5.1 ACTUAL LEGISLATION

- **Scheme**
- **Tax benefit**
- **Eight factors**
- **Purpose**

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3.5.2 SCHEMES

- **Defined term**
- **Commencement**
- **In or outside Australia**
 - Entered into
 - Carried out

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