

ANTI-AVOIDANCE PROVISIONS

The Government will introduce legislative changes to improve the operation of the general anti-avoidance rule (GAAR). These changes cover recommendations 6.3 to 6.5 of *A Tax System Redesigned*. The GAAR is currently in Part IVA of the *Income Tax Assessment Act 1936*.

Key Features

- Consistent with the Ralph Review's recommendations, modifications to the GAAR will provide:
 - an improved 'reasonable hypothesis' test;
 - an expanded concept of 'tax benefit'; and
 - powers to allow the Commissioner to issue a single determination in respect of a scheme.
- In addition, also consistent with the Ralph framework, the expanded generic concept of tax benefit will require a consistent penalty structure to apply to all forms of tax avoidance.

Commencement date

The new measures will apply to schemes entered into or carried out after 1pm, Australian eastern summer time, 11 November 1999. Giving these measures immediate effect will strengthen the operation of the existing law.

Current arrangements

Under Part IVA, the Commissioner of Taxation has the power to cancel a tax benefit that has been obtained through the carrying out of a scheme, where a participant has a sole or dominant purpose to obtain a tax benefit. 'Tax benefit' is defined in terms of only some of the individual elements that make up tax payable. Furthermore, a tax benefit is identified and quantified by forming a reasonable hypothesis as to what would have occurred in the absence of the scheme. There is no guidance provided by the legislation as to what is the reasonable hypothesis.

The Commissioner of Taxation must make a separate determination in respect of each taxpayer who has obtained a tax benefit. This is so even when the particulars of the scheme are the same for each taxpayer. At present the penalty regime applies only to tax benefits that result in less tax being paid, and not to losses that have been crystallised but not utilised.

Why the change is needed

Strengthening and streamlining the GAAR are key elements of the Government's objective to discourage tax avoidance practices. The improved reasonable hypothesis test will provide legislative guidance to taxpayers that is not presently in Part IVA. The generic definition of tax benefit makes this concept more robust while a consistent penalty regime would apply to all forms of tax avoidance, including artificially created losses that are currently not subject to penalties.