

# PART IVA

*Presenter:*

*Tony Evans*

*Tax Specialist*

*Gustax Consulting Pty Ltd*

August, 2004

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

## 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

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

## 1. ANTI-AVOIDANCE HISTORY

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

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

## 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

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

## 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

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

## 1.3 PART IVA

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

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

## **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**

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

## **2. PART IVA - EFFECTIVE COMMENCEMENT**

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

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

## **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**

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

## **3.1 COMMON TERMINOLOGY**

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

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

## **3.1 COMMON TERMINOLOGY**

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

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

## **3.2 GENERAL OPERATION**

**Overrules all of sections except:-**

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

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

### 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**

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

### 3.4 WITHHOLDING TAX AVOIDANCE

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

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

### 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**

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

### 3.5.1 ACTUAL LEGISLATION

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

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

### 3.5.2 SCHEMES

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

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)

### 3.5.2 SCHEMES

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

GUSTAX CONSULTING PTY LTD  
(JUST TAX CONSULTING)