

# ALERT

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## Tax Law Amendment (2013 Measures No 1) Bill 2013: General avoidance rules

An exposure draft and explanatory material have been released on the proposed amendments to Part IVA of the *Income Tax Assessment Act 1936* (**Part IVA**). The amendments apply to schemes entered into or commenced to be carried out on or after 16 November 2012, rather than the original date of the announcement (1 March 2012). Legislation is expected to be introduced into parliament in the autumn 2013 sittings.

As you would be aware, the principal role of Part IVA is to counter schemes that secure a tax benefit for the taxpayer. Under the proposed amendments, a new objects clause will be inserted confirming that Part IVA applies to a tax avoidance scheme where a tax benefit is obtained in connection with that scheme and it must be reasonable to conclude that a person entered into that scheme for the sole or dominant purpose of enabling a taxpayer to obtain a tax benefit.

Under the proposed legislation, when considering alternative postulates (counterfactuals) in relation to a scheme, consideration must be given to the other ways the taxpayer could have reasonably been expected to achieve the same non-tax effects (if any) as it achieved from the scheme. This amendment will prevent the taxpayer from arguing the 'do nothing' counterfactual. It is important to

note that when hypothesising alternative postulates to a scheme, no consideration is to be given to the potential tax costs of those alternatives.

The amendments restore the dominant purpose test to its central role as the 'pivot' around which Part IVA operates. The amendments focus on the ways that the taxpayer might reasonably be expected to have achieved the same non-tax effects as it achieved from and in connection with the scheme. Further, the amendments ensure that in considering alternatives to the scheme, no consideration is given to the taxation implications of those alternatives.

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