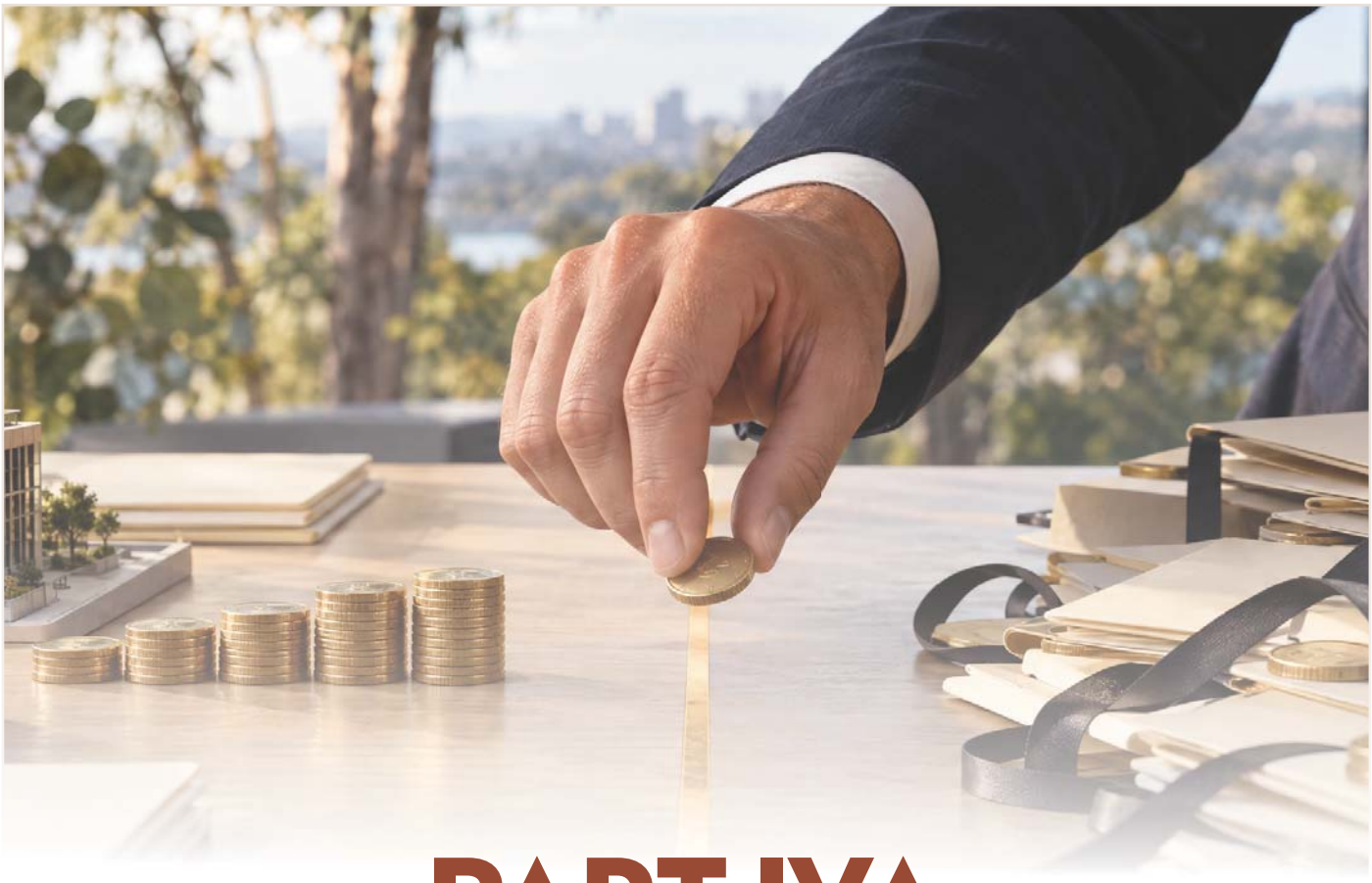


PART IVA

WHERE TAX PLANNING CROSSES THE LINE

You're entitled to arrange your affairs to pay less tax. Choosing a business structure or timing an asset sale is ordinary planning. But Part IVA of the *Income Tax Assessment Act 1936*, Australia's general anti-avoidance rule, lets the ATO cancel a tax benefit where the dominant purpose is to get that tax benefit. That can happen even when every step follows the law.

Part IVA applies when three elements are present.

There is a scheme

"Scheme" is defined very widely. It covers any agreement, arrangement, understanding, transaction or course of conduct. The ATO can point to a whole restructure or one step inside it. Even not doing something can be part of a scheme.

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.

There is a tax benefit

The ATO compares what you did with what would reasonably have happened without the scheme. If that alternative would have cost more tax, you got a tax benefit, such as:

- a deduction you wouldn't otherwise have claimed
- income left out of your assessable income
- a capital loss you wouldn't otherwise have made
- withholding tax you didn't pay

Choices the tax law expressly gives you, such as certain elections and rollovers, are generally outside Part IVA, unless you set things up just so you could make the choice.

The dominant purpose was to get a tax benefit

The test is objective. What you think or say your purpose was doesn't decide it. If a reasonable person looking at the facts would conclude the dominant purpose was the tax benefit, the test is met.

The law lists eight factors to weigh, including how the arrangement was carried out, its form compared with its substance, its timing and the change in your financial position. Warning signs include:

- steps with no commercial reason
- money that goes round in a circle
- related-party dealings on terms strangers wouldn't accept
- a tax result that doesn't match the real economic outcome

Know the cost

The ATO can cancel the tax benefit and reassess you as though the scheme never happened. Penalties are 50% of the tax shortfall, or 25% if your position was reasonably arguable, plus interest charges.

Write down the commercial reasons

Your best protection is a genuine commercial reason recorded at the time. Board minutes, emails and file notes carry far more weight than an explanation put together once an audit starts. If asset protection is the reason, be ready to show the actual risk and why a simpler route wouldn't have worked.

Reminder

Before you restructure, move assets between family entities or change how business income is shared, talk to us. We can check the plan against Part IVA and help you keep the right records from day one.

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