

UNDERSTANDING AUSTRALIA'S GAAR

OVERVIEW



In Australia, the General Anti Avoidance Rules ('GAAR') are set out in Part IVA of the *Income Tax Assessment Act 1936* (Cth). The operative provision under this Part is s 177D.

TAX BENEFIT



The GAAR assesses objectively whether a scheme's main purpose was obtaining a tax benefit, by using an alternate postulate test.

OBJECTIVE FACTORS



Section 177D(2) outlines objective factors to be considered, including: method, form, timing, intended outcome, financial changes, consequences, and relationships involved.

SUBSTANCE OVER FORM



The GAAR prioritises the substance of a transaction, evaluating whether the transaction practically achieves a benefit, regardless of its form.

REPERCUSSIONS



The Commissioner of Taxation has discretionary power to cancel a tax benefit if the scheme's dominant purpose is avoidance. Avoidance is not illegal but the benefit may be cancelled.

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