

Director General may disregard or vary certain arrangements

44. (1) Where the Director General is satisfied that the purpose or effect of any arrangement is directly or indirectly to—

- (a) alter the incidence or postpone the time due of any tax which is due and payable by or which would otherwise have been due and payable by any person;
- (b) relieve any person from any liability to pay tax or to furnish a return;
- (c) reduce or avoid any liability imposed or which would otherwise have been imposed on any person by this Act;
- (d) obtain any credit or refund of input tax or any increase thereof for any person which would not otherwise have been obtained; or
- (e) hinder or prevent the operation of this Act in any respect,

the Director General may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the arrangement and make such adjustments as he deems fit to counteract any tax advantage obtained or obtainable by that person from or under the arrangement.

(2) For the purposes of this section the Director General may deem—

- (a) any person other than a taxable person who is a party to or has participated in any arrangement, to be a taxable person;
- (b) any supply of goods or services, whether or not a taxable supply, that is affected by or is part of any arrangement, made to and made by any taxable person or a person deemed to be a taxable person under paragraph (a), to be a taxable supply;
- (c) any supply of goods or services that, but for any arrangement affected by this section, would have been the taxable period in which the supply was made, to take place in any taxable period;
- (d) any supply of goods or services, that is affected by or is part of any arrangement, to have been made, or consideration for the supply to be given, at open market value.

(3) This section shall not apply to any arrangement carried out for *bona fide* commercial reasons and had not as one of its main purposes the obtaining of any tax advantage.

(4) For the purposes of this section, “tax advantage” includes—

- (a) any avoidance or reduction in the liability of any person to pay tax;
- (b) any increase in the entitlement of a person to a credit or refund of input tax;

- (c) any reduction in the total consideration payable by any person in respect of any supply of goods or services; or
- (d) any postponement of the time when tax is due and payable.