

76AV. Commissioner may determine that an obligation to lodge a statement has been avoided

- (1) This Division applies to an arrangement or scheme (the “**scheme**”) if the Commissioner determines that, but for the scheme —
 - (a) a relevant acquisition within the meaning given by section 76AJ would have occurred on or after 1 July 2004 by reason of which a person would have been required to lodge a section 76AG statement;
 - (b) a relevant acquisition within the meaning given by section 76AQ would have occurred on or after 1 July 2004 by reason of which a corporation would have been required to lodge a section 76AN statement;
 - (c) a relevant acquisition within the meaning given by section 76ATC would have occurred by reason of which a person would have been required to lodge a section 76AT statement; or
 - (d) a relevant acquisition within the meaning given by section 76ATJ would have occurred by reason of which a corporation would have been required to lodge a section 76ATG statement.
- (2) The Commissioner can only make a determination under subsection (1) if the Commissioner is of the opinion that the scheme is or was one having as its purpose, or one of its purposes, the defeat of the object of Division 2, 3, 3a or 3b, as the case may be.
- (3) For the purposes of subsection (2) the Commissioner may have regard to —
 - (a) the way in which the scheme was entered into and carried out;
 - (b) the form and substance of the scheme, including the legal rights and obligations involved in the scheme and the economic and commercial substance of the scheme;
 - (c) when the scheme was entered into and the length of the period during which the scheme was carried out;
 - (d) any change to a person’s financial position, or any other consequence, that has resulted, will result or may reasonably be expected to result from the scheme’s having been entered into and carried out;
 - (e) the circumstances surrounding the scheme; and
 - (f) any other matter that the Commissioner considers relevant.

[Section 76AV inserted by No. 11 of 2004 s. 31.]