“Be careful what you sign”: Businesses warned to seek advice on new contracts after Arbib sneaks through vague new tax avoidance provisions

Friday, 02 March 2012 09:25
Patrick Stafford, Smartcompany

Assistant Treasurer Mark Arbib sparked a controversy in his last few hours as a senator, announcing the Government will tighten anti-avoidance tax provisions – but the detail of these new provisions won’t be confirmed until the spring sitting of Parliament, which is six months away.

Tax experts are up in arms over the announcement, warning businesses to seek professional advice when signing big new contracts or agreements as these could possibly be found in breach of the new Part IV anti-avoidance provisions when they are eventually passed.

Paul Drum, head of business and investment at CPA Australia, says the problem is that although the specifics of the new provisions will be introduced in spring, they will actually come into effect from today. That means any agreements or contracts made between now and when the legislation is written could end up being impacted.

“Seek professional advice before you sign anything,” he warns.

“Major restructuring deals require quite complex arrangements, and these are the types of agreements that require more advice. If you’re doing major deals, you need to seek advice.”

“The problem is that although the new laws will come into effect from today, they haven’t been written yet. So it’s quite a balancing act in trying to adhere to laws that haven’t been introduced.”

Arbib said yesterday the Government would introduce new amendments for the Part IV A provisions, saying that while the majority of taxpayers do the right thing, there are always a few that will try to game the system.

“As well as directly attacking illegitimate tax avoidance, Part IVA also plays an important role in deterring the potential abuse of the tax system by the broader tax-paying community,” Arbib said.

The Part IV A provisions were introduced in 1981 and were designed to get rid of schemes that helped people avoid paying tax.

There are provisions in the legislation about how these tax avoidance schemes operate, one of them being that there must be a “scheme” and a “tax benefit” obtained in connection with the scheme, and it must be reasonable to conclude that a person entered into that scheme for the dominant purpose of obtaining that tax benefit.

But Arbib argues that in some recent cases, taxpayers argued that they didn’t actually get a tax benefit because, without the scheme, they wouldn’t have entered into an arrangement that attracted tax.

“For example, they could have entered into another scheme that also avoided tax, deferred their arrangements indefinitely or done nothing at all. Such an outcome can potentially undermine the overall effectiveness of Part IVA and so the Government will act to ensure such arguments will no longer be successful,” he said.

But Drum says Arbib is out of step with tax professionals and says no one outside of the Tax Office thinks the current laws are too weak.

“The Tax Office has had concerns with anti-avoidance provisions for a while now. They’ve had a couple of losses, so they’ve sought after the Government to ensure it’s revamped,” Drum says.

Drum isn’t the only one raising the alarm. Tax Institute senior tax counsel Robert Jeremenko told The Australian there was no proper consultation, which creates a danger the ATO will gain extra powers “and that has huge ramifications”.

Institute of Chartered Accountants tax counsel Yasser El-Ansary also told the publication that anti-avoidance laws are tough enough, and that he is “less than convinced there’s a fundamental problem here”.

“We stand by protecting revenue and having the integrity of the system intact, but this is potentially…a show-stopping event.”