TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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ITAA97 NANI is overlooked but dangerous.

ITAA97 NANI

When you hear non-arm's length income, you probably think of s109 of the SIS Act. But there is actually a much more potent non-arm's length rule and that one sits in s295-550 of the income tax assessment act 1997.

In this episode Peter Bobbin of Argyle Lawyers in Sydney will talk about this very potent, but often overlooked section of the Income Tax Assessment Act 1997 – s295-550 – ITAA97 NANI. Here is what we learned from this episode.

To listen while you drive, walk or work, just access the episode through a podcast app on your mobile phone.

s295-550

Section 295-550ITAA97 goes much deeper into the issue of non-arm's length transactions than s109 of the SIS Act does. Just the bit about NANI is 43 lines in ITAA97 as opposed to the 27 lines of s109 of the SIS Act. So the ITAA97 offers almost 70% more content on this issue.

With non-arm's length expenses (NANE) added, s295-550 has become even longer. When you add the bit about NANE, the section is 63 lines longer than s109. So offering 133% more on the topic.

Non-Arm's Length ITAA97 s295-550

Some parts of s295-550 have existed since 1964 in former subsections 23F (16) to (18).

There are four important parts to s295-550. The first part sets the tone:

> *Income from a scheme where the parties are not dealing with each other at arm's-length and the amount of the income is greater than what it would have been had the parties been dealing at arm's-length in relation to the scheme (subsection 295-550(1)).*

The second part discusses private company dividends:

> *Private company dividends (including income attributable to such dividends) unless the amount is consistent with an arm's length dealing (subsection 295-550(2))*

The next important part deals with discretionary trust distributions.

> *Trust income derived as a beneficiary of a trust, other than a fixed entitlement (subsection 295-550(4)*

And the final one in this list deals with fixed entitlements.

> *Trust income through a fixed entitlement where the fund acquired the entitlement under a scheme, or the income was derived under a scheme, the parties to which were not dealing with each other at arm's-length, and the amount of the income is more than what might have been expected to derive if those parties had been dealing with each other at arm's-length (subsection 295-550(5).*

All this is just our brief take on the issue. Please listen to the episode above. Peter Bobbin explains all this in a much better way than we ever could.

MORE

SIS Act NANI

TRIS to Retirement Phase

Segregation

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