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Federal Court decides Guardian AIT appeal on s100A

TAX

Long-awaited decision leaves a central question about "ordinary family or commercial dealings" unaddressed.

By Philip King•24 January 2023•5 minute read

The Full Federal Court has handed down its decision in a long-awaited Section 100A case on trust distributions, dismissing the Tax Commissioner's appeal against Guardian AIT but setting aside four orders by the Federal Court in relation to the second respondent in the case, Alexander Springer.

The original 2021 decision had rejected s100A assessments by the Commissioner on the trustee, Guardian AIT, which added up to more than $5.5 million including substantial penalties for the three years in question, 2012-14.

An alternative assessment of the beneficiary, Mr Springer, and applied Part IVA and made an assessment with penalties of more than $5.3 million.

The ATO did not appeal the primary judge's decisions in respect of the 2014 income year but contested 2012 and 2013.

In the appeal decision, Justices Perry, Derrington and Hespe unanimously decided that s100A did not apply to the 2012 income year and further that Part IVA did not apply to enable the Commissioner to make a determination in respect of the 2012 income year.

The Commissioner accepted the primary judge's finding that a reimbursement agreement did not exist for the 2012 income year.

The justices also found that s100A did not apply to the 2013 income year but Part IVA did apply.

"Unlike the 2012 related scheme, it is considered that the manner in which the 2013 related scheme was entered into and carried out supports a conclusion that Mr Springer, Guardian or AITCS [a corporate beneficiary] (or those advising them) entered into or carried out that scheme for the dominant purpose of enabling Mr Springer to obtain a tax benefit in the year ended 30 June 2013," the decision says.

Robyn Jacobson of the Tax Institute said the decision left a central question of how s100A applies unaddressed.

“The court found that there was not a reimbursement agreement in respect of either of the income years that were the subject of the appeal, so it was not necessary for the court to consider the issues of purpose and the scope of the phrase ‘ordinary commercial or family dealing’,” she said.

“This means that the appeal decision provides no additional guidance on the operation of the exception.”

Tax specialist John Jeffreys said the decision offered some reassurance about how s100A would apply.

“This decision is a very important decision on the preconditions for the operation of section 100A and effectiveness of the amendments to Part IVA made in 2012,” he said.

“Tax practitioners will take comfort from the limitation of section 100A imposed by the Full Federal Court but must be more vigilant about the potential operation of Part IVA.