



Welcome to our Spring Newsletter and the season when Melbourne comes alive with the Spring Carnival.

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Hopefully the optimism that surrounds this time of the year translates to an improved confidence that favourably impacts your business and investment interests.

I have had the privilege over the past six months to have travelled extensively throughout the World in my new role as Chairman of PKF Australia and also as a Director of the PKF Global Board.

During that period I have travelled to San Francisco, Florida, Bali, Auckland and Montreal addressing other PKF Accountants telling them about the extensive resource our PKF Network has in Australia.

It occurred to me while telling our International colleagues how we could assist with their clients' needs in Australia, that it was just as important that we made our clients aware of our capability locally, nationally and globally.

The most distinctive aspect of our PKF alignment is that we are able to access firms in every Key Economic Centre of the world and when we do call on

that connection, we are dealing with independently owned firms such as our own.

Our Australian Network has Offices in Melbourne, Sydney, Brisbane, Newcastle, Perth, Canberra, Hobart, Canberra, Tamworth and Rockhampton all of which are independently owned.

Together we have 600 staff and we rank as the 12th largest Global Brand in Australia.

The advantage of having formed our Network is that we have been able to share the significant costs of building the robust organisation so essential to produce quality work nationally which we simply could not provide from just a single office.

PKF has a National offering in Business Advisory, Audit, Corporate Advisory, Tax and Business Recovery and Insolvency.

Each of these divisions has a National Committee overseeing training, peer review, monitoring of standards and risk management so that there is a common

approach throughout the Network providing assurance that each of our Offices is producing quality services. This has brought immense advantages with the sharing of knowledge, particularly with divisional Annual Conferences where staff throughout Australia have an opportunity to meet together for training and personal interaction.

By complementing the advantages of an Independent local Firm with sufficient resources to service our clients in any market in Australia or indeed the World, we believe we have struck the right balance to continue to provide the relationship you currently experience and to which we aspire.

May your investments prosper during the Spring Carnival.

Marriage breakup and tax consequences

Chaya Lal
Business Advisory Services - Associate Director



Background

Now that the Commissioner has confirmed his views in the issuance of TR 2014/5 (the ruling) on the implications of private companies paying money or transferring property in fulfilment of orders made in matrimonial proceedings under s.79 of the Family Law Act (FLA) (often referred to as a s.79 order), it is important to understand what the tax implications are in complying with this order and whether there are any avenues available to better manage these proceedings.

The tax implications that invariably need to be considered in such an order are where:

- A private company pays money or transfers property; or
- A party to the matrimonial proceedings causes the private company to pay or to transfer property (this article does not consider the CGT implications that may arise in relation to the above)

Money or property paid or transferred to a shareholder

According to the ruling, a payment (whether in cash or transfer in property) by a private company in satisfaction of the order, will be treated as an ordinary dividend noting that the dividend will be frankable to the extent it is paid out of the private company's profits. This 'payment' will therefore be assessable income of the shareholder under s.44 of the ITAA 1936.

Division 7A does not apply in this situation as s. 44 applies with the operation of s. 09L of the ITAA 1936 whereby the double taxation of the same amount is prevented.

Money or property paid or transferred to an associate of a shareholder

In contrast to payments made to shareholders, a payment (again this can be in cash or property) to an associate of a shareholder will be treated as a deemed dividend under s.109C of the ITAA 1936. The associate will however be treated as being the shareholder under Div 207 of the ITAA 1936 (having the same characteristics as a shareholder to whom they are associated) and as such, this dividend will be frankable.

Per paragraph 5 and 6 of the ruling, it is noted that the s.109J exception does not apply to this dividend. The Commissioner's view on this is detailed further below.

Under both scenarios above, it is important to note that the decision to frank the dividend or deemed dividend is not necessary under law. This decision lies with the directors of the private company whilst not forgetting that these dividends are only frankable to the extent of available franking credits and the benchmark franking percentage.

Why the s. 109J exemption does not apply

Division 7A is relevant where a payment is made to associates of shareholders.

In order for the payment to be excluded from being a dividend under the s.109J exception, two things must happen:

- The payment discharges an obligation of the private company to pay money to the entity; and
- The payment is not more than the amount that would have been required to discharge the obligation if the private company and the entity had been dealing with each other at arm's length.

Where the Family Court makes an order against a matrimonial party such that it causes a private company to transfer property to an associate of a shareholder, it is the Commissioner's view that this is imposed on the matrimonial party and not the private company itself. The private company itself therefore does not have an obligation and it is for this reason in his view that the s. 109J exception does not apply.

'There may however, be opportunities to reduce the tax impact of the ruling through proper planning and consultation with tax advisers and legal practitioners.'

At first glance the exception may apply when the order requires a payment of money to an associate of the shareholder. However, the second requirement of dealing at arm's length is again not met as in the Commissioner's view this amount will always exceed the arm's length amount.

This is because from a commercial perspective, there is doubt whether a company can appropriate profits to a non-shareholder without breaching its obligations under the Corporations Act 2001.

If the order is against a private company to transfer property to an associate of a shareholder, this would be viewed as a binding obligation however s. 109J is specific in that it has to be a payment for money. Clearly a transfer of property does not satisfy this requirement.

The Commissioner's view in the ruling certainly is a departure from the ATO's previous and long standing view that s.109J could exclude certain payments by a private company arising because of matrimonial property proceedings from the operation of Div 7A.

Options?

Given the departure from its original view, the ATO will not purport to apply its views prior to 30 June 2014. It is critical for parties to matrimonial proceedings post this date to consider not only the equity of the family pool division but also be aware of the potential tax pitfalls that may arise out of s.79 court orders.

Clearly it will be difficult to avoid the new Div 7A treatment under TR 2014/5 for those husband and wife businesses owned in a company structure or where majority of wealth is accumulated in a single private company. It is therefore important to ensure early planning before a relationship breakdown including employing alternate structures that will not have the dire tax consequences as described above (whilst of course keeping in mind any potential Pt IVA of the ITAA 1936 implications).

There may however, be opportunities to reduce the tax impact of the ruling through proper planning and consultation with tax advisers and legal practitioners. For example, a cash payment may be made through a fully franked dividend to a company which would be deemed to be an associate of a shareholder. Whilst this does not limit the tax payable it does differ the impact especially if it is managed over time in relation to any 'top up tax' that may ensue when funds are eventually utilised.

Another consideration is a question of the 'distributable surplus' of a private company under s. 109Y. Whilst this article will not discuss in detail the intricacies of what constitutes 'distributable surplus', if a company does not have a distributable surplus, then a payment to a non-shareholder spouse would not constitute a deemed dividend. This therefore also presents as an opportunity for practitioners to further manage the possible tax outcomes of the ruling.

Conclusion

It seems unlikely that there will be a change in the Commissioner's current view in the short term and in the absence of a successful legal challenge. It is therefore imperative that careful planning and discussion of options are conveyed to clients affected by the ruling. It seems that for now, avoiding and or effectively structuring payments of money or transfer of assets out of a private company will need to be the focus of practitioners.



SELF MANAGED SUPERANNUATION FUND TRUSTEES BEWARE OF THE NEW PENALTY REGIME

Justin McCartney
Business Advisory Services Partner



There are in excess of 500,000 self managed superannuation funds in Australia and that number continues to escalate. Self managed superannuation funds are very highly regulated with many rules and regulations in place to protect the members' benefits (including from themselves).

Legislation has been passed to provide the ATO with a new penalty regime with effect from 1 July, 2014. These penalties may be rectification directions, education directions and / or monetary.

Rectification directions will require the Trustee to provide evidence to the ATO that the Trustee has rectified their error.

Education directions will require the Trustee to provide evidence to the ATO that the Trustee has completed an approved course.

Monetary penalties are based on penalty units with each unit worth \$170. More serious errors warrant more penalty units thereby ensuring higher monetary penalties. Importantly, these penalties are imposed on the Trustees; not the fund. That is, the penalties are not to be paid from the assets of the self managed superannuation fund. And,

they will not be tax deductible.

These monetary penalties are to be imposed on each Trustee. Where two individuals act jointly as the Trustees of a self managed superannuation fund, they should consider replacing themselves with a Trustee company with the two of them as Directors. This strategy will halve their potential penalties.

Some of these monetary penalties are :

Failure to comply with an education direction	\$ 850
Failure to keep minutes and records	\$ 1,700
Failure to prepare and keep annual financial statements	\$ 1,700
Failure to formulate and review an investment strategy	\$ 3,400
Contravening the borrowing restrictions	\$10,200
Contravening the loans to members restrictions	\$10,200

As you can see, it could be very costly to the Trustee if the self managed superannuation fund breaches any of the many rules and regulations. Should you be a Trustee and have any queries, please contact us.

Fight Cancer Foundation



Giving Hope and Saving Lives

"We were fortunate to experience the extreme generosity of Fight Cancer Foundation at a time when it seemed like our whole world was falling apart."

Bendigo couple, Angie and Scott Jackman's young son Wilson was diagnosed with a rare immune deficiency when he was just 18 months old and needed a bone marrow transplant to save his life.

"After the transplant, Wilson developed life-threatening complications and we had to return to Melbourne," said Angie. "Because of Wilson's condition we had to be within five minutes walking distance of the Royal Children's Hospital and I will be forever thankful for the accommodation provided by Fight Cancer Foundation."

"Wilson was finally well enough to come home. Although our lives haven't quite returned to normal, I have started to sleep a little better. Wilson is growing stronger each day. He is playing happily with his older brother Harry. He is eating solid food after having been fed through a tube for so long, and it is a delight to watch him discover ice cream and cake."



"I have learned many lessons from this devastating experience. Above all I realise that it doesn't matter what things you have when you leave this world, it only matters what you do whilst you are here."

It was Wilson's life-challenging illness that helped Angie make up her mind to raise funds for cancer support and research through Fight Cancer Foundation.

Angie's forays into fundraising have raised an amazing \$15,000, through a three-month Pop up Recycled Fashion

Shop in Bendigo last year and a classical Sunday afternoon concert earlier this year. "I am amazed and delighted by the support shown through our local community," said Angie.

Fight Cancer Foundation provides three low-cost Accommodation Centres, relieving regional patients and their families of undue financial stress and the worry of having to undertake frequent long distance travel to access treatment centres.

Families are often given short notice and don't know for how long they will be away from home during treatment. This causes immense upheaval as the family tries to grasp the changes in their lives. Fight Cancer Foundation aims to make these changes as easy as possible.

BMDI Rotary House in North Melbourne is a 'home away from home' close to Melbourne's major treating hospitals and provides low-cost, self-contained apartments for families during daunting rounds of treatment.

John Opie House in Hobart was opened in 2008 for patients and their carers, providing high quality, comfortable accommodation for Tasmanians needing to travel to Hobart for ongoing treatment.

Hilltop, the new Albury Wodonga Accommodation Centre, next to Albury-Base Hospital, opened in March 2013, caring for patients from southern New South Wales and north-eastern Victoria.

[Fight Cancer Foundation have been clients of PKF Lawler Melbourne for over 25 years.](#)



**Fight Cancer
Foundation™**

Giving hope. Saving lives.

In continuing to support one of our favourite charities, The Fight Cancer Foundation, we provided an auction item to their annual Dinner Rouge function at Bistro Thierry.

Thierry Cornevin of Bistro Thierry provides the venue, all food & wine & his staff provide their time all for free to ensure a wonderful time and maximum fund raising for this most worthy charity. Fight Cancer Foundation patrons Hugh Jackman and Deborah Lee Furness also made an appearance to everyone's delight.

The auction was very successful & our item, a Day at Flemington for four people in the Chairman's Club to be hosted by Steve Jones & his wife Paula, added to the continued pro bono audit work provided by our audit team led by partner Steve Bradby. The successful bidders, John & Jill Ferguson & Peter & Mary Mitsakis, were made to pay handsomely but will have no expense spared in ensuring they have a wonderful day.



Krystal Everitt, Business Recovery & Insolvency (BRI) & Billy Brownless taken at the IWIRC "International Women's Insolvency & Restructuring" Footy Finals Luncheon 2014.



Jason Stone and Glenn Franklin (BRI) attended the Melbourne Forum Insolvency Conference in Darwin and organised a fishing charter

5 minutes with...



James Dickson
Audit & Assurance Services

If you had to live your life over again, what one thing would you change?

I'd be taller

Why did you choose this career?

I feel it's best to stick with your strengths in life and I have a gift for accounting which I've always found to be very logical. Could have been a lot more exciting but it could have been worse.

What do you find most enjoyable about your job?

Getting involved in, and understanding, different businesses through discussions with people that are very passionate about what they do.

If I were to ask your colleagues to describe you, what would they say?

Stereotype of an accountant

Did you know....

Not only is Steve Jones a Chartered Tax Advisor & Fellow of the Tax Institute, the Tax Institute has bestowed upon him the status of 'Tax Legend'. Steve commented " ...this is the pinnacle of my professional career . To share this extraordinary honour with those who have already attained Tax Legend status is truly humbling ... "



One of our ICAA Indoor Soccer tournament teams



Congratulations to Alex Quinn for competing in the 42km Melbourne Marathon

Trivia Night

The 'Inaugural' PKF Lawler Melbourne Trivia Night was held at Campari House on Friday the 29th of August.

Seven teams consisting of the office's most clever individuals converged upon the Hardware Lane venue to determine the Champion.

Sean Dillon was unsurprisingly confident his charges could help him achieve 'Office Legend' status by registering a third straight win, albeit under different firm names. The venue provided a wonderful setting, with equally as superb finger food and plenty of beverages to ensure the staff were kept happy whilst racking their brains for answers to obscure questions.

Unfortunately, despite the obscurity of a lot of questions and some rabid Googling, 'Sean & Co Pty Ltd' (it must have taken him ages to think of that one) emerged victorious at the end of the night by a VERY narrow margin. We now have to put up with another twelve months of the same nonsense! The organisers are therefore looking to bring forward the 2015 Championship.

Thanks must go to the Partners for sponsoring what was widely regarded as our best Trivia Night yet. We look forward to doing it all again next year!

Anthony Pane - Business Advisory Services



Diary

NOVEMBER

04 Melbourne Cup Day Holiday

21 Lodgement of monthly BAS/IAS

DECEMBER

01 Due date for balance of 2014 tax payable for companies & superannuation funds with turnover >\$10m

22 Lodgement of monthly BAS/IAS

25 Christmas Day Holiday

26 Boxing Day Holiday

Our Services

We provide clients with expertise in:

- Acquisition Due Diligence
- Audit & Assurance
- Budgeting & Financial Modelling
- Business Recovery & Insolvency
- Business Valuations
- Corporate Secretarial Services
- Estate Planning
- Forensic Accounting
- Franchise Services
- Independent Accountants Reports;
- Independent Expert Reports
- Initial Public Offerings (IPOs)
- Litigation Support
- Management & Financial Accounting
- Mergers & Acquisitions
- Sale of Business & Exit Strategy
- Succession Planning
- Superannuation
- Tax planning and compliance
- Vendor Due Diligence

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*Best Firm rated by CEO's, CFO's & COO's