

New ATO Tax Ruling

Private company transfers in matrimonial property proceedings – TR2014/5

The anticipated ruling from the ATO was released on 30 July 2014, having been released in draft form in November 2013 (TR2013/D6). The ATO have confirmed their backflip in respect of certain payments made by private companies in the course of a matrimonial property matter. The effect of the policy change is that there will be no relief from a Division 7A deemed dividend consequence via the “109J Payment of a Genuine Debt” exemption.

The ruling states that:

“Where a section 79 property order requires:

- A private company, or
- A party to the matrimonial proceedings to cause the private company,

to pay money or transfer property to a shareholder of the private company, the payment of money or transfer property in compliance with that order is an ordinary dividend to the extent paid out of the private company profits and is assessable income of the shareholder under section 44 of the ITAA 1936”.

Similarly, a payment of money or transfer of property to an associate of a shareholder in compliance with such an order is a payment for the purposes of s 109C(3) of the ITAA 1936.

Specifically, section 109J does not prevent the payment from being treated as a dividend under subsection 109C(1). The dividend is frankable to the extent permissible under normal franking rules.

The effect of the ruling is that there is now a difference between a payment to a shareholder and a payment to an associate of the shareholder. While the ruling may be the subject of challenge by a taxpayer in the future, the policy of the ATO is clear. When payments are proposed to be made out of a company, or intervening trust, it will be essential to seek specific taxation advice.