TR 2014/5EC - Compendium

Ruling Compendium – TR 2014/5

A compendium of responses to the issues raised by external parties to Draft Taxation Ruling TR 2013/D6 *Income tax: matrimonial property proceedings and payments of money or transfers of property by a private company to a shareholder (or their associate)*

Summary of issues raised and responses

Issue No.	Issue raised	Response
1	The Final Ruling should only apply prospectively from its date of issue – 'undertakings' given by the ATO in paragraph 38 of the Draft Ruling are inadequate to provide any meaningful protection to taxpayers. Separated couples may have already reached a property settlement in reliance upon the Commissioner's previous position and it would be inappropriate for the financial effect of those settlements to be altered by a retrospective change in the administration of the tax law, which will inevitably disadvantage one party over the other. This may lead to applications being made to set aside Orders or BFAs, which will involve considerable legal cost to parties and a substantial financial impost to the community given that court resources will need to be devoted to the determination of these complex applications.	The Commissioner will not seek to apply the view in the Final Ruling in respect of the issue of whether Division 7A applies to payments of money made by a private company to an associate of a shareholder where that payment is made in conformance with an order of the Family Court and that order is made before the issue date of the Final Ruling (see paragraph 42 of the Final Ruling). This achieves a prospective application in respect of that issue and is consistent with the Commissioner's undertaking in PS LA 2011/27 and with subsection 358-10(2) of the *Taxation Administration Act 1953*. The Commissioner does not consider a general administrative practice existed in relation to the other issues. Accordingly, and consistent with PS LA 2011/27 the application date of the Final Ruling in respect of such issues is both prospective and retrospective.
2	Under the views expressed in the Draft Ruling, the associate would be taxed on the market value of the property in the year of the property transfer under section 109C of the ITAA 1936. However, where the transfer of such a CGT asset is also subject to rollover relief under Subdivision 126-A of the *Income Tax Assessment Act 1997* (ITAA 1997) the transferee will inherit the	The consequence of the roll-over is to both defer the taxation of the company's capital gain (or recognition of its loss), and to change its incidence from the company to the matrimonial party in receipt of the asset. It is agreed that section 118-20 of the ITAA 1997 will not reduce any resulting capital gain borne by the matrimonial party by reference to any dividends included in their

	company's original cost base as a consequence of that rollover. When the transferee later disposes of that asset that subsequent disposal will be subject to the CGT provisions to the extent of any difference between the asset's original cost base and the market value of the asset at the time of that subsequent transfer. Prima facie there appears to be no relief from double taxation where there is a subsequent capital gain as subsection 118-20(1) of the ITAA 1997 only applies if the double taxation arises 'because of the event'. As the assessable dividend arises independently of the subsequent CGT event it would therefore appear that subsection 118-20(1) cannot apply to prevent double taxation. It would provide an unacceptable outcome if the property is to be the personal residence of one of the spouses.	assessable income when the asset was received. However, the fact that the gain on the transfer is ultimately subject to taxation, and that a party in receipt of a dividend is assessable on that dividend, is not of itself controversial. For example, if (outside Family Law proceedings) the company were to transfer an asset to a shareholder, the shareholder would be assessed on the value of the asset as a dividend, and the company would be assessed on any capital gain resulting from that transfer. That is, both amounts would likewise be taxed – though a credit may ultimately be available for the tax paid by the company via the imputation regime. It is acknowledged that such credits are not available where the incidence of taxation falls on the matrimonial party rather than on the company. However, the matrimonial party may have concessions available to them that are not available to the company, such as the CGT discount, which is calculated from the time the company acquired the asset: See item 1 of the table to section 115-30 of the ITAA 1997. Section 118-180 of the ITAA 1997 specifically provides that the main residence exemption is not available in respect of the period the property was held by the company, though it will be available (where it is otherwise satisfied) in respect of any growth in value of the property after this time. The Board of Taxation, in the context of its Post implementation review into Division 7A, has been made aware of these issues. For completeness, the Final Ruling now explains the basic operation of Subdivision 126-A of the ITAA 1997. It should also be noted that these consequences do not arise if the transfer of property is not 'because of' the section 79 order (that is, if the transfer of property is not in compliance with that order). For example, if the order requires that money be paid, and the parties separately agree to satisfy that obligation by the

		transfer of property, the transfer of property is not 'because of' the order in the strict sense, and the roll-over provisions and cost base adjustment of the shareholder's interests in the private company will not occur. Instead, the company will be assessed on any capital gain that arises upon that transfer.
3	As rollover relief under Subdivision 126-A of the ITAA 1997 is compulsory rather than optional, if it applies to a CGT event, the Family Court and tax practitioners are generally aware of its consequences and take this provision into account when determining the division of assets on the breakdown of a relationship. We anticipate however, that there will be cases where neither the Family Court nor tax practitioners will be aware of the potential Division 7A consequences of the division of assets on the breakdown of a relationship. We submit that the ATO should be prepared in such cases to exercise its discretion under section 109RB of the ITAA 1936 to either (i) completely disregard any deemed dividend that arises as a consequence of a relationship breakdown or (ii) cap the amount of any deemed dividend under Division 7A at the CGT cost base of the relevant asset.	On issue of the Final Ruling, it is the Commissioner's expectation taxpayers and their advisers will have regard to the Division 7A consequences of transfers of property from private companies to shareholders and their associates in progressing property settlements. Should the tax consequences be overlooked, this is not a reason of itself for the transfer of property to escape taxation by exercise of the Commissioner's 109RB discretion to completely disregard the deemed dividend. That taxation consequence in such circumstances is no different to any other tax consequence that might be overlooked during property settlements (for example CGT consequences). It would be contrary to the known policy intent of Division 7A, to exercise the section 109RB discretion in a 'blanket' way to limit the amount of the deemed dividend in the manner proposed.
4	The ATO should issue some general guidance on when it will be prepared to exercise its discretion under section 109RB of the ITAA 1936 in the case of a relationship breakdown.	Following on from what has already been said in respect of issue 3, it is not immediately apparent whether any general circumstances exist which would make it appropriate to automatically exercise the Commissioner's section 109RB discretion. Instead, the Commissioner will consider such applications and representations on a case by case basis.

5	As the Draft Ruling is concerned with the taxation effect under Division 7A if private companies paying money or transferring assets in satisfaction of Family Court orders, it should include commentary and examples on the operation of section 109RC of the ITAA 1936, which was specifically introduced to allow deemed dividends arising from such orders to be franked.	Agreed. A detailed discussion of the role of section 109RC of the ITAA 1936 has now been included in the Final Ruling.
6	The appropriate policy position in relation to the taxation consequences of a relationship breakdown under Division 7A is that a separated couple should be in no worse, and in no better, position than an intact couple. Thus, despite the Commissioner's prior long standing administrative practice, there is no policy reason to justify the tax free payment of monies or property to a person solely because of *inter alia* entering into a binding financial agreement, or obtaining an order under section 79 of the FLA. However, the reasoning adopted by the Commissioner in the Draft Ruling is incorrect and the relevant provisions of the tax law do not necessarily achieve the result contended by the Commissioner in the Draft Ruling. Rather, to achieve the intended policy outcome, the legislature must amend the tax law to remove any doubt.	Noted. However, the Commissioner maintains the view that the existing law gives the outcomes expressed in the Final Ruling, and has proved additional reasoning in support of this position.
7	In a fresh construction of section 109J of the ITAA 1936, the Draft Ruling says that there is no binding requirement in law that is imposed upon the private company to comply, so paragraph 109J(a) does not apply.	Paragraph 81 of TR 2013/D6 concerns cases where the order is not made against the private company. At paragraph 86 of TR 2013/D6 it is recognised that orders made directly against the private company do give rise to a relevant obligation for paragraph 109J(a) purposes. This position is maintained in the Final Ruling.

8	To the extent that the relevant order requires a transfer of property to a shareholder or an associate of a shareholder, the Commissioner now takes the view that the transfer of property is not the payment of money to discharge the obligation and again, paragraph 109J(a) of the ITAA 1936 has no application.	The Commissioner has always considered that transfers of property do not satisfy the requirements of paragraph 109J(a) (refer ATO ID 2004/461). In terms of transfer of property to a shareholder, the Commissioner makes no statement in the Draft Ruling concerning paragraph 109J(a) because it is the Commissioner's view this is captured by a plain operation of section 44 of the ITAA 1936 (refer also to paragraphs 58 to 67 of TR 2013/D6).
9	As presently drafted, section 109J of the ITAA 1936 operates if there is 'payment' of an amount to discharge a private company's monetary obligation. The Commissioner's position is that the transfer of property does not involve the discharge of an obligation to make a payment of money. However, this is an unduly restrictive construction of section 109J. A purposive construction of that section is: • that the company must have a liability • the liability must be expressed as a value, and • the means of extinguishing that liability is by the payment of something of value, not just a specific kind of property.	The Commissioner's view is that a transfer of property may discharge an obligation of a private company to pay money to a shareholder (or their associate) (refer new footnote 23 of the Final Ruling) but that is to be contrasted with the satisfaction (by way of payment in cash or transfer of property) of a specific order of the Family Court for a private company to transfer property. The latter is not a discharge of an obligation to pay money within the clear words of paragraph 109J(a) of the ITAA 1936.
10	There is no 'arm's length' in the section 109J of the ITAA 1936 test that implies that the relevant parties must be engaged in 'commercial dealings' The reference to 'arm's length' in section 109J is to ensure that inflated payments are not disguised as the payment of liabilities.	As explained in paragraph 97 of the Final Ruling, the Commissioner disagrees and is of the view that the judicial authority suggests that the statutory context dictates that there is a need for an alternative hypothesis which, by application to the specific facts in question, necessitates consideration of what commercial dealings may have been entered into had the parties been dealing at arm's length.

11	There will be significant uncertainty for separated couples attempting to settle the division of their assets. That uncertainty has the potential to both delay settlements and to protract family law litigation, neither of which are in the public interest.	Under TR 2013/D6 and the Final Ruling, all payments and transfers of property from a private company to a shareholder (or their associate) made in satisfaction with an order of the Family Court under section 79 of the FLA are taxable either as an ordinary or deemed dividend. The tax position with respect to such payments and transfers of property will therefore both be consistent and clear on issue of the Final Ruling. It is anticipated that having such a published ATO view on these matters will lessen the uncertainty.
12	An order or BFA for a property settlement between a separated couple may contain a term that provides a 'departing spouse' with an open-ended tax indemnity for any future tax liabilities. That indemnity may have been provided by the 'remaining spouse' on the basis that the Commissioner would not seek to treat the receipt of property in the hands of the departing spouse as being taxable. Unfortunately, it would be open to the departing spouse to now seek a private ruling, allowing the Commissioner to treat the receipt of the payments as an assessable dividend and issuing an assessment. This would then result in the remaining spouse now being called upon to satisfy the liability because of the amended assessment under the tax indemnity previously provided. In such case, it would also expose the remaining spouse's legal and financial advisers to a professional indemnity claim.	Neither TR 2013/D6 nor the Final Ruling represent a change in view as to the taxation of transfers of property from a private company to a shareholder (or their associate). The Commissioner's view has always been that such payments give rise to an incidence of taxation. (ATO ID 2004/462). In terms of the issue of whether Division 7A applies to payments of money by a private company to an associate of a shareholder, the Final Ruling has only prospective application (refer issue 1). Accordingly, indemnities in respect of such payments ought not to be effected.

13	We do not agree with the interpretation of paragraph 109J(b) of the ITAA 1936 expressed in the Draft Ruling which is directly contrary to the views expressed in numerous private binding rulings (PBRs) issued by the Commissioner over a significant period of time. In particular we contend that any payment of money or transfer of property by a private company to an associate of a shareholder made pursuant to an order of the Family Court of Australia (the Family Court) on a matrimonial settlement is invariably made on the basis that the private company and non-shareholder spouse are dealing on an arm's length basis as the payment or property transfer has only occurred because the Family Court has made an order to that effect.	Noted. The first alternative view in Appendix 2 of the Final Ruling explains why the Commissioner disagrees. Further, as noted at issue 1, the Final Ruling has prospective application in respect of the 'payment of money to associates' issue.
14	In terms of what is said at paragraphs 103 and 104 of TR 2013/D6, we submit that, as a matter of fact, a payment made by a company pursuant to an order of the Family Court to a spouse who is an 'associate of a shareholder of a private company' will not be voluntary and therefore, will not be gratuitous. In many cases, orders made under the Family Law Act are not made in order to give effect to or make enforceable a settlement reached by the parties through their own negotiation, rather the Family Court will make a determination of the appropriate division of the matrimonial property independently of the wishes or proposals of the parties. In these circumstances, an obligation will be imposed on the parties, rather than the parties (including the private company) submitting to those obligations by agreement. In such a case, we submit that it is difficult to see how the payment made by the private company pursuant to the Family Court Order can be characterised as being 'voluntary and therefore, gratuitous.	What is stated at paragraph 104 of TR 2013/D6 is not in the context of what transpires in fact between the parties. Rather, it is in the context of constructing an alternative hypothesis against that which happens in fact might be tested. This testing is what paragraph 109J(b) of the ITAA 1936 necessarily directs us to do given the authorities referred to in TR 2013/D6 and the Final Ruling that explain what is meant by the phrase 'dealing with each other at arm's length' as it appears in similar statutory contexts.

15	The Commissioner's conclusion in the Draft Ruling presupposes that, in every case, the private company, (through the agency of its directors) will be complicit or disengaged in the proceedings that lead to the imposition of the obligation to make the payment on the private company. This is not the reality where there is a marital breakdown. It is invariably the case that the divorcing couple will be vigorously competing for their respective self-interest in securing their entitlement to the assets of the marriage. It is often the case that the private company will have other shareholders and directors involved in the matrimonial dispute in addition to one of the spouses. Moreover, these shareholders and directors will be entirely independent and unrelated to a spouse of the marriage. In these circumstances we understand that the Family Court is able to impose orders for the division of matrimonial assets against a company even where one of the spouses is not the sole shareholder and/or director, provided that the company is a party to the Family Court proceedings and has been afforded procedural fairness. In this case, the 'parties' (particularly the private company) are not only in an arm's length relationship because of the independent representation on the board, but their dealing is also very much of necessity at arm's length.	As is explained at paragraph 106 of the Final Ruling, a matrimonial cause before the Family Court does not involve any 'dealing' or 'bargaining' between the parties in the course of the proceedings. The parties are engaged in a dispute before the Family Court which is determined solely by exercise of the Court's jurisdiction under section 79 of the FLA. The Family Court must always exercise its own discretion on whether to make an order under section 79 of the FLA, and, if so what orders to make. This is so even if orders are sought by consent – see *Harris v. Caladine* (1991) 172 CLR 84 at 96, 103-104, 124, 133. A private company which is made party to the proceedings is similarly subject solely to the Court's jurisdiction in the same way as the matrimonial parties. This means, the obligation is in law unilaterally determined by the Court having regard to the submissions and evidence made to the Court. The obligation arising out of the Order does not crystallise from a dealing between the parties to the proceedings (being the private company and the recipient of the payment that is contemplated in paragraph 109J(a) of the ITAA 1936). Paragraph 109J(b) is as a matter of construction not concerned with whether the parties are 'at arm's length' which is a different technical legal question. What paragraph 109J(b) seeks to construct is an alternative hypothesis concerning an obligation that crystallises from a dealing between the private company and the recipient of the payment. Dealings between the recipient and a third party (such as the other matrimonial party) are not relevant in that context.

16	We also disagree with the view expressed in paragraph 94 of the Draft Ruling that compliance with the arm's length requirement under paragraph 109J(b) of the ITAA 1936 requires that an alternative hypothesis be constructed in testing the application of paragraph 109J(b). Based on the words in the legislation it seems clear to us that the enquiry should be about whether the 'amount of the payment' is an arm's length amount. In other words, the obligation to pay an amount and the circumstances in which that obligation arose do not require one to construct an alternative hypothesis. Moreover, we believe that the comments made by Lindgren J in *Di Lorenzo Ceramics Pty Ltd & Anor v. FCT* [2007] ATC 4662 actually support such an interpretation of paragraph 109J(b). Lindgren J did not consider an alternative hypothesis about how the obligation came about. His Honour only made reference to whether the price under the relevant agreement was no more than the one that would have arisen if the parties had been dealing with each other at arm's length. In our view, if the parties are dealing with each other at arm's length, it follows that the amount of the payment required under an obligation (however that arises) must be the arm's length price. This view is consistent with the decision in *Granby Pty Ltd v. FCT* [1995] 30 ATR 400. In the circumstances where a Court of Law makes an order for a private company to make a payment to an entity, it would in our view be hard to consider a situation where the parties would not be dealing at arm's length.	The legislature has not employed the words 'arm's length amount' Rather, paragraph 109J(b) uses the words, 'is not more than would have been required to discharge the obligation had the private company and entity <u>been dealing with each other at arm's length</u>.' This is a different statutory context to that in *Granby Pty Ltd v. FCT [*1995] 30 ATR 400 (*Granby*). That case was concerned merely with whether the parties were dealing with each other at arm's length in respect of the actual transaction in contemplation. The context was not one of measuring that which had transpired against something else. Further, as is also explained in *Granby*, parties may be at arm's length and arrive at an arm's length amount yet by reason of benefiting a 3rd party, the test of 'dealing with each other at arm's length' may not be satisfied. In that Case, Justice Lee said > That is not to say, however, that parties at arm's length will be dealing with each other at arm's length in a transaction in which they collude to achieve a particular result, or in which one of the parties submits the exercise of its will to the dictation of the other, perhaps, to promote the interests of the other. In *Di Lorenzo Ceramics Pty Ltd & Anor* v. FCT [2007] ATC 4662 (*Di Lorenzo Ceramics*), Lindgren J, was silent on how the 'price the parties would have agreed upon if they had been dealing with each other at arm's length' would be determined (were it necessary to do so). Issue 15 explains why in the Commissioner's view parties to proceedings before the Family Court are not engaged in a 'dealing' such that Family Court proceedings cannot be used as the test for paragraph 109J(b) purposes.

17	Assume Chris and Kerry Wilson are the shareholders and directors of XYZ Pty Ltd. When their son Peter was 26 years old he slipped on the shop floor when visiting his parents at the business premises of XYZ Pty Ltd. As a result of the fall, Peter injured his back severely and took legal action against XYZ Pty Ltd seeking compensation. The Court ordered XYZ Pty Ltd to pay Peter $1,000,000 as compensation for the back injury. In our view, the $1,000,000 payment is a pecuniary obligation determined by a Court. As the obligation to pay the $1,000,000 arose from a Court Order, the $1,000,000 ought to be considered an arm's length amount. As such the compensation payment should satisfy the criteria in section 109J of the ITAA 1936. We do not consider that an order made by the Family Court should be treated any differently to an order made by another Court.	On these facts, an alternate hypothesis can be constructed to satisfy the requirements of paragraph 109J(b) of the ITAA 1936. In the alternative to proceeding to trial, the parties might settle the matter out of Court. In such circumstances an equivalent amount might be expected to be agreed. The benefits of settlement are as usual the savings to both parties in terms of the time and costs of litigation. The agreement to settle would impose an enforceable obligation in contract on the private company. This is because consideration passes in respect of the promises made by both parties. In the case of the injured party, it is the forbearance to pursue the cause of action in tort that represents the necessary consideration. Whether paragraph 109J(b) is satisfied in any particular case is ultimately a matter to be decided having regard to the facts of each case.
18	We are concerned with the accuracy of the assertion made at paragraph 106 of TR 2013/D6 which states: > The Explanatory Memorandum to Taxation Laws Amendment (2007 Measures No 3) Bill 2007 (EM) which inserted section 109RC of the ITAA 1936 makes it clear payments made in satisfaction of relevant Family orders are intended to be assessable as dividends. The Explanatory Memorandum relevantly states: > Under the current law, transfers of property and other 'payments' in respect of marriage or relationship breakdown are caught by Division 7A even though they may be non-voluntary (eg by court order). [paragraph 1.44] We are concerned because it crucially omits the last sentence of that paragraph, specifically: "As such a deemed dividend may arise." Thus, a deemed dividend may not necessarily arise (for example, if one of the exemptions in Subdivision D of Division 7A applies, such as section 109J).	The use of the word 'may' in the final sentence of paragraph 1.44 is explicable, as with all Division 7A triggering's to the prospect for insufficient distributable surplus to be available to cause an amount to be deemed a dividend under section 109C of the ITAA 1936 and included in assessable income under section 44 of the ITAA 1936. For completeness, we have included the entire paragraph when quoted at paragraph 155 of the Final Ruling.

19	The Draft Ruling includes a number of examples dealing with the application of Division 7A where a private company is ordered to pay money or transfer property to an associate of a shareholder as part of a Family Court order. However, these examples do not include any references to existing shareholder or associate loans to the private company and how the repayment of such loans in accordance with a Family Court order would be treated by the ATO. We would therefore like these examples to be expanded to deal with the situation where the private company is ordered to repay an existing loan due to the shareholder's associate together with confirmation that such a payment would not be treated as a deemed dividend for Division 7A purposes as it is a repayment of an existing obligation.	This issue is outside of scope of the Final Ruling. Nevertheless, the Commissioner agrees that where an order is made under section 79 of the FLA for a private company to make a payment of money in satisfaction of an antecedent debt between the private company and an associate of a shareholder (the associate), the payment made in conformance with that order nevertheless remains in discharge of the antecedent debt. The antecedent debt is a pre-existing obligation in contract for the private company to make a payment of money to the associate. The obligation arises as consideration for the prior lending of that amount of money by the associate to the private company The obligation in contract is an obligation to pay money as contemplated by paragraph 109J(a) of the ITAA 1936. Further, the payment of money to discharge the obligation is of the same quantum as that which would be required between parties engaged in a borrowing on arm's length commercial terms. That is, the alternate hypothesis in this case would result in an obligation of the same quantum and a payment of money in discharge of that obligation also of the same quantum. Notwithstanding that the payment is ordered under section 79 of the FLA, it nevertheless remains in discharge of the obligation founded in contract. For these reasons, the payment to discharge the antecedent debt also satisfies the requirements of paragraph 109J(b) of the ITAA 1936 meaning section 109J stops the payment from being treated as a dividend under section 109C of the ITAA 1936. To avoid confusion, the Final Ruling makes it clear that payments made in discharge of a debt in existence apart from matrimonial proceedings are excluded from the definition of a 'section 79 order' (that otherwise gives rise to dividends).

20	I recommend that this tax be treated similarly to capital gains obligation that applies to assets distributed by an estate. The basis for the assets would be carried forward by the recipients and tax is paid at that time. This system allows the recipients of the assets under the Court order to arrange a favourable liquidation of the assets, and the tax will then be paid. The result to the Commissioner of Taxation will be at least as much, or more, since the recipient will likely gain a higher sales result and the Commissioner will receive a higher proportionate reward.	Noted. The submitted approach is similar to that which occurs in respect of assets transferred to matrimonial parties under Subdivision 126-A of the ITAA 1997, now dealt with in the Final Ruling. However, separate to gains made in respect of such assets, any payment or transfer to a matrimonial party under a section 79 order as described in the Final Ruling, also gives rise to an assessable dividend.
21	There are several instances in which Explanatory Memoranda are referred in the Draft Ruling. Section 15AB of the *Acts Interpretation Act* provides in essence that in the interpretation of a provision of an Act, these can be considered to confirm that the meaning of the provision is the ordinary meaning conveyed by the text or to determine the meaning of the provision when the provision is ambiguous or obscure or when an ordinary meaning conveyed by the text leads to a result that is manifestly absurd or unreasonable. We submit that as the words of paragraph 109J(b) of the ITAA 1936 clearly require that the payment made by the private company be not more than would have been required to discharge the obligation had the company and the entity been dealing with each other at arm's length in relation to the Family Court proceedings. Consideration of what a private company may pay to a non-shareholder 'in a commercial setting', that is, outside of the Family Court setting is not required.	As already noted elsewhere, the parties to family law proceedings are not engaged in any dealing from which the obligation on the part of the private company crystallises. Rather, that obligation arises solely from the exercise of the jurisdiction of the Family Court under section 79 of the FLA. The identification of an alternative hypothesis, as the authorities in a similar statutory context require, necessitates consideration outside the Family Law context where such dealings do arise (that is in a commercial setting). The interpretative enquiry therefore necessitates consideration of a commercial setting rather than doing so because of any reliance upon extrinsic materials. In the Final Ruling, the Commissioner observes that the outcome of interpretative enquiry is consistent with what is apparent from the extrinsic materials.
22	In our experience it is almost always the case that transactions undertaken as part of a property settlement in Family Court proceedings are the result of vigorous negotiations between the parties' lawyers over several months or in some cases several years. Such transactions are motivated by the commercial and emotional desire of the parties to go their separate ways and get	Noted. However, it remains the Commissioner's view that section 109J of the ITAA 1936 is not capable of stopping a Division 7A triggering in the context of family law payments contemplated in the Final Ruling.

	on with their lives, and is not motivated by the desire to achieve a tax benefit. However, in some circumstances it may be the case that the anti-avoidance provisions in Part IVA of the ITAA 1936 will apply. For example, we consider that it would be more likely that Part IVA would apply if both spouses were to receive a payment of cash from a private company pursuant to court orders, but one or both parties remain owners of the company. In these circumstances it would appear that the purposes of at least one of the payments is not to sever ties with the company to achieve a final separation of the parties. However, as is always the case with Pat IVA, the facts of each particular case will need to be considered.	