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ICAA's forthcoming "Business Valuation Specialist" designation

There is currently no applicable system for the registration of business valuers in Australia.

However, the Institute of Chartered Accountants in Australia (ICAA) is in the process of introducing a business valuation "specialisation". This will be assigned to members who apply to receive the designation and meet the valuation education and practical experience requirements of the Institute.

There are two pathways to obtaining the Business Valuation Specialist designation:

- postgraduate studies
- workshop and assessment education component.

Due to our lengthy practical business valuation experience, both Bruce Wilkinson and Russell Munday of Munday Wilkinson have been permitted to enrol for the Business Valuation Specialisation Workshop pathway option to be held in May this year.

Farewell to Gerard Lim

We bid a sad farewell to Gerard Lim who has given sterling service (loyal and hard-working) to Munday Wilkinson for over 7 years as a forensic consultant.

Gerard is leaving for personal reasons to return to Sydney. He will be greatly missed — a true gentleman.

Expert Determinations

Expert Determinations are one of many available options to resolve disputes. It is where an independent third party, acting as an expert rather than as an arbitrator or judge, is appointed to decide the dispute. The expert will be a person with specialist or technical knowledge relevant to the dispute. The determination by the expert is generally final and legally binding on the parties. Expert Determination is particularly suited to disputes of valuation or of a technical nature.

Advantages of Expert Determination include that it is:

- a **prompt** way to resolve a dispute
- a relatively **cost-effective approach** to resolve a dispute.

Expert Determinations are most often found in contracts relating to:

- shareholder agreements — valuation of shares
- real estate leases — rent reviews
- completion accounts in sales of businesses/companies — where price is subject to adjustment based on subsequent events (achievement of sales, earnings before interest and tax, etc.)
- construction contracts (to avoid holding up the completion of the contract).

We have been appointed to conduct numerous Expert Determinations over the years. This was often following our nomination by the Institute of Chartered Accountants in Australia. Examples include:

- Expert Determination concerning adjustments for “accrued incomings” in regard to the transfer of an aged care facility.
- Expert Determination of the value of an exiting shareholder’s interest in an unlisted company which imports and distributes power transmissions.
- Expert Determination of the management fee to be charged under an agreement between an AFL football club and management company in relation to a club-owned venue.
- Expert Determination of the value of a shareholding in a computer software business.
- Expert Determination in respect of a dispute concerning approximately \$9 million between a vendor and purchaser of a gaming machine manufacturing business to determine the level of stock obsolescence as at transfer date.

The expert should adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay and expense, so as to provide an expeditious cost-effective and fair means of determining the dispute.

Typically we request that the following procedures apply:

- We invite each party to provide a submission to the expert as to what they consider the appropriate value or position should be and detail the basis for this.
- Specific information we consider appropriate is requested.
- If the expert considers further information or documentation is required, he will then request any further information he considers relevant.
- The expert then prepares his report, setting out the information he has relied upon and the basis of his determination.

A timeframe for the process is set out for the parties to comply with.

Expert Determination is not appropriate for every dispute. It is not suited where there are serious issues of fact or allegations of fraud.

TR 2013/D6 — Matrimonial property proceedings and payments or property transfers to private company shareholders/associates

On 13 November 2013 the ATO released Draft Taxation Ruling TR 2013/D6 regarding matrimonial property proceedings and payments of money or transfers of property by a private company to a shareholder or their associate.

The draft ruling sets out the Commissioner's amended view that orders under section 79 of the *Family Law Act 1975* (Cth) obliging a private company to pay money to an associate of a shareholder of that company (e.g. a spouse), will now be considered distribution of profits from the company and will now be assessed as dividends either pursuant to section 44 or under Division 7A of the *Income Tax Assessment Act 1936* (Cth) (ITAA). Such deemed dividends may well be frankable by the private company.

Prior to the release of the draft ruling, the Commissioner's view (as evidenced in private rulings issued by the Commissioner) was that an order made under section 79 of the Family Law Act which gave rise to an obligation for a private company to pay money to an associate of a shareholder, would attract the protection of section 109J of ITAA so that no deemed dividend arose under Division 7A.

Notably, the draft ruling provides that where the view regarding orders made under section 79 of the Family Law Act for a private company to pay money to an associate of a shareholder as set out in the draft ruling is less favourable to a taxpayer than the Commissioner's previous practice in respect of such orders, the Commissioner proposes not to undertake active compliance activities so as to apply that view in respect of any such orders made prior to the date the final ruling is to be issued.

Active compliance will not be undertaken in relation to payments made after the final ruling is issued, as long as those payments are made pursuant to orders made before the final ruling is issued.

Public comment on the draft ruling closed on 8 January 2014.

Division 7A issues generally

We conduct numerous valuations of companies for family law purposes and note that it is very common for a Division 7A issue to arise anyway in regard to debit loans due to the private company from shareholders and associates. One solution is for the shareholder/associate to repay the loan to the company. However, in family law situations, this is not possible.

The other solution is to declare a dividend to reduce the debit loan balance that will crystallise a tax liability to the shareholder. In our valuation reports for family law purposes, we typically estimate the tax liability (payable by the shareholder/s) relating to such dividends that would clear the debit loan balance after factoring in any applicable imputation credits associated with the notional dividend.

Recent Matters

In the past few months we have been involved in numerous matters including:

- Expert report assessing the solvency of a property developer entity.
- Loss of earnings assessments for people diagnosed with mesothelioma.
- Assistance with financial due diligence of the acquisition of an entity.
- Expert opinion on the loss and damage incurred by the operator of a motel as a consequence of defects in the property.
- Expert opinion as to any business loss suffered as a result of the reduction in the quality of the milk solids produced at a farm as a consequence of a fire allegedly caused by a power company.
- Investigation of financial and other documents to provide opinion as to whether a report of Victorian Police's forensic accountant is consistent with and in accordance of such documents.
- Valuations (for a variety of purposes including shareholder disputes, family law, tax restructuring, sale and acquisitions) of:
 - Women's clothing retailer
 - Men's clothing wholesaler and retailer
 - Footwear wholesaler
 - Insurance agency
 - Licensed post offices
 - Wildlife zoo
 - Greek restaurant
 - Thai restaurant
 - Street light pole manufacturer
 - Environment auditing business
 - Web magazine
 - Hairdressers
 - Educational publisher
 - Gymnasium
 - Panel beater
 - Dental equipment supplier
 - Earth excavation business
 - Real estate franchisor
 - Distributor of fire retardants
 - Property developer
 - Assess the value of a partner's interest in Deloitte Canada
 - Numerous business valuations and loss assessments for the Valuer General Victoria in respect of businesses affected by the Regional Rail Link project.



Munday Wilkinson Chartered & Forensic Accountants



Russell Munday



Bruce Wilkinson

Our Aim

Munday Wilkinson is a boutique business valuation and forensic accounting firm established in June 2000.

We offer the legal profession, and others, a quality, personalised, time efficient and cost-effective service.

All our professional staff are subscribed members of the Business Valuation and Forensic Accounting Special Interest Groups of the Institute of Chartered Accountants in Australia.

Our Services

We are well experienced in:

- Business, share and other equity valuations
- Quantification of economic loss
- Loss of earnings assessments /reviews
- Family Law – Single Expert Reports, review of Single Expert Reports, investigations, advising on tax and refinancing issues for proposed settlements
- Fraud Reviews and Financial Investigations
- Due Diligence Reviews
- Professional Negligence matters concerning accountants and directors
- Compulsory Acquisitions – claims assistance
- Due Diligence services
- Expert Determinations
- Expert Witness

We can provide forensic accounting services for a wide variety of dispute related matters from the small to the large.

Further Information

If you would like further information regarding this newsletter or our services, please contact us:

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