



LEGACY LAW

Protecting the assets in your family tree

## PROTECTING YOUR IMAGE RIGHTS

**YOUR LOOKS DO COUNT.** Even in a digital world and without a right to privacy, we have rights relating to the use of our image in certain situations.

**[ We are in discussions with Microsoft about the alleged use of the writer's image below! ]**

People in sports, entertainment and the arts, in particular, often get paid to be associated with products or services. There have been many cases where images have been used to promote products in an unauthorised way. As far back as 1996, Olympic swimmer Keiren Perkins successfully sued Telstra when they used his image for an advertisement without his permission. The court held that using this image inferred Perkins preferred Telstra over Optus, despite the fact he had never made a statement regarding this. The court decided the decision to use this image was misleading and deceptive due to Perkins' endorsement of other products and his status as a famous athlete.

Fees from endorsements often eclipse the money people earn from the work that made them famous. Individuals cannot usually interpose a company to get company tax rates which can be around 20% lower than company rates. Their income, where it is largely generated by them, is subject to tax at marginal rates which can be taxed at 49% plus levies. Intellectual property is one of the exceptions to this. A practice has arisen where a person uses a company or trust to own their image. Companies also transfer intellectual property such as patents, trademarks and copyright to separate companies.

Individuals have long been transferring their "image rights" to separate companies who license the image for use and charge a fee. If a fee of \$1m was split as to 50% to image rights owned by a company, a person could save around \$100,000 tax if they would otherwise be on the top marginal tax rate.

The ATO was becoming frustrated at the size of the tax loss and inconsistencies in splits that were being presented to them. Last year, the ATO released Practical Compliance Guideline 2017/D11 in relation to tax treatment of the use and exploitation of a professional sportsperson's 'public fame' or 'image'.<sup>1</sup> The purpose of the Guideline was to set a 'safe harbour' that apportions an amount for the use of the image.

The ATO said they would accept that up to 10% of the payments can be treated as the use of their image under the third party's license. However, the 2018-2019 Budget seeks to remove this option from 1 July 2019, so that people will have to include all payments and non-cash benefits in their personal assessable income.<sup>2</sup> The implication of these changes for affected individuals is that family trust and licensing arrangements need to be reviewed.

**Please contact us if you or someone you know may need assistance in this area.**



<sup>1</sup> Practical Compliance Guideline PCG 2017/D11: Tax treatment of payments for use and exploitation of a professional sportsperson's 'public fame' or 'image'.

<sup>2</sup> Budget 2018-19, Budget Paper No. 2 – Budget Measures, page 45.