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October 2015 ATO Voting Criteria

General Overview

As many are aware there are two major alternatives to Bankruptcy, those being Debt Agreements (Part IX) and Personal Insolvency Agreements (Part X) proposals. These agreements basically involve putting a proposal to creditors for consideration to repay an amount of monies, which in most cases is a better result than what creditors would receive should the debtor enter into bankruptcy. Through our experience more often than not the Deputy Commissioner of Taxation ("ATO") is one of the major creditors.

Recently the ATO released a statement detailing what their representatives will consider in addition to our own when voting on proposals, advising that one major factor is ensuring that in fairness to those that do comply with their ATO obligations those that don't are not receiving an unfair advantage.

Relevant but not limited to considerations.

- Any liabilities not yet established, such as unissued assessments or outstanding documents;
- Whether the debtor has made appropriate arrangements to meet future tax liabilities as and when they fall due;
- Future income which may be assessed for future income contributions under the *Bankruptcy Act*;
- The Debtor's compliance history and the compliance history of related parties or entities and whether appropriate arrangements to meet future taxation obligations as they fall due over the course of the arrangement, have been made;
- The extent and seriousness of any taxation offences which may have been committed;
- The likelihood that the proposals put forward would be achieved;
- Other matters that are considered to be of public interest or which reasonably question the fairness and appropriateness of voting in support of proposals, particularly where the consequence of those proposals is the removal of statutory powers of investigation, examination or the ability to clawback assets or funds;
- Any apparent antecedent and voidable transactions or dispositions which might be unable to be pursued if the proposal were to be accepted.

Conclusion

It is accepted that it is not necessary for a debtor to have his/her tax lodgement obligations current when proposing a P.I.A or Debt Agreement, however it will impede the ATO's decision making process and may work to your client's detriment.

Bottom line is, ensure lodgements are current and the appropriate advice is sort at an early stage to enhance the likelihood of ATO support.

Please contact us any time to discuss and note as always we at Chamberlains SBR are more than welcome to review any matter with you or your clients regardless of how trivial it may appear.

*Chamberlains SBR, Chartered Accountants - Specialises in Personal & Corporate
Business Reconstruction & Insolvency*

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