



Principal Chris Chamberlain B.Bus., F.C.A.
Mobile: 0412 931 178

Partner Steven Priest B.Bus.(Acc) C.A.
Mobile: 0427 457 416

Manager Brett Dodson B.Bus.(Acc)
Mobile: 0417 691 356

Manager Graeme Brown.
Mobile: 0488 435 265

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Bankruptcy & Income

Not as clear as it may seem

Indexed Amount

Under Section 139P of the Bankruptcy Act 1966, a Bankrupt is liable to pay Contributions back to their Bankrupt Estate if their net income exceeds an Indexed Threshold amount.

The current thresholds are as follows & adjusted on number of dependants:

<u>Number of dependants</u>	<u>Net Income limit</u>
0	\$57,866.90
1	\$68,282.94
2	\$73,490.96
3	\$76,384.31
4	\$77,541.65
over 4	\$78,698.98

More often than not a Bankrupt's income will not exceed the threshold, however if they are employed by a Related Entity, their income is placed under considerably more scrutiny as at times their "Income" is a contrived amount to remain under the threshold, whilst the "Value" benefit they provide their employer is well in excess, ie:

Example 1

- Bankrupt employed by property developer Family Trust
- Trust makes \$400k profit and proposes to distribute to non-Bankrupt spouse
- Court held Bankrupt should be deemed to have received a percentage contribution component regardless of how distributed and was assessed to pay contributions.

Example 2

- Bankrupt earned \$200k pre-Bankruptcy
- Bankrupt subsequently employed by wife's Company, effectively providing the same services
- Bankrupt was paid \$50k
- Bankrupt was assessed at \$200k which was upheld

Note

If Bankrupt is assessed at higher amount they do not get the benefit of being able to claim the full PAYG on increased figure as it was not paid!

Basis for Outcome

Section 139Y of the Act provides that if a Bankrupt does not receive "reasonable" remuneration for services he provides, the Trustee may (for the purpose of making a contribution assessment) determine that the Bankrupt received the higher remuneration amount.

As always, if you or your clients need advice on any business turnaround or insolvency matters do not hesitate to contact us.

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CHAMBERLAIN'S S.B.R. OFFICES –

WAGGA WAGGA

Tel 02 6938 3800

Fax 02 6921 5492

Email admin@chamberlainssbr.com.au

DUBBO

Tel 02 6884 1077

Fax 02 6884 1072

Email graeme@chamberlainssbr.com.au

WANGARATTA

Tel 1300 887 687

Fax 1300 798 825

Email admin@chamberlainssbr.com.au