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February 2019

Family Law can order transfer of tax debt between Spouses!!! (Strange but True!)

Background (re Tomaras & Ors)

The husband and wife married in 1992 and separated in 2009. During this period the wife accrued significant tax debt totalling \$217,669 and the Commissioner obtained a Default Judgment but did not pursue.

In November 2013, the husband is made Bankrupt and a month later the wife commences proceedings against the husband in Federal Circuit Court seeking Orders for an alteration of property interests under the Family Law Act (FLA), but in particular that her debt to the Deputy Commissioner be transferred to her husband's Bankrupt Estate.

The question was put to the Full Court of the Family Court as to whether Section 90AE(1) – (2) of the FLA has the authority to substitute the husband as the sole debtor for the wife's ATO debt and release the spouse. The Full Court answered in the affirmative.

The Deputy Commissioner appealed to the High Court who unanimously upheld the Full Court's decision.

In handing down its decision the High Court further held that in making the Order it has to be considered reasonably appropriate for the purpose of the division of property between the parties to the marriage that it was just and equitable to be so even in the circumstances which result in the debt not being paid in full.

[Watch This Space!!](#)

Trends

There has been an increase in young builders falling into financial difficulty predominately due to insufficient back end working capital, support, excessive lifestyle and sloppy paperwork. If you have clients in this sphere they need prudent support and strong guidance.

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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