Monthly Information Newsletter – Tax & Super

Laws on bankruptcy changed temporarily to help cope with COVID-19

The government has temporarily changed bankruptcy law to help protect people who are facing unmanageable debt as a result of the economic impacts of COVID-19. If you are in financial difficulty, application can be made for temporary debt protection, which prevents recovery action by unsecured creditors, for six months.

The threshold of debt that can trigger bankruptcy has also been increased from $5,000 to $20,000.

The body governing Australia's insolvency and bankruptcy regulations, the Australian Financial Security Authority, says being granted a temporary debt protection means enforcement action cannot be taken by unsecured creditors to recover money owed to them.

This means they cannot garnish your wages, or have a bailiff or sheriff seize goods.

Note however that creditors that hold a security over an asset (such as a car, or a house under a mortgage arrangement) can still repossess that asset. These are known as secured creditors. Also, temporary debt protection does not apply to some types of debt, such as HELP debts, child support, and fines imposed by court order.

During the period under the protection order, which is six months but used to be 21 days before the COVID-19 changes, a person can seek advice from a free financial counsellor, negotiate a payment plan with creditors, or consider if any of the insolvency options available may be a viable choice.

Once you apply for a temporary debt protection order, you cannot apply again for a further 12 months. After the initial six months is up, the person who applied for the protection is not automatically made bankrupt. If you don't apply for bankruptcy, creditors can still pursue you for the debt.

Importantly however, a temporary debt protection is viewed by the courts an "act of bankruptcy" (formally known as a "declaration of intention to lodge a debtor's petition"). This means that a creditor could use the fact that a person lodged a temporary debt protection as the basis for an application to a court to make that person bankrupt.