



ITSA Debt Agreement Service Newsletter December 2009

DAS hours of operation over Christmas period

ITSA will be closed from 25 December 2009 until 3 January 2010 and will reopen for business on 4 January 2010. Debt agreement proposals and voting correspondence are able to be forwarded to the Debt Agreement Service over the Christmas/New Year period but they will not be actioned until after 3 January 2010.

Disclosing child support

We have seen some instances when a debtor, required to pay child support, has disclosed their income as the amount remaining after deduction of child support payments. This is not an accurate disclosure of the debtor's circumstances. The full extent of income, ignoring any child support payments, must be disclosed at Item H on the Explanatory Statement. The amount that is required to be paid for child support should then be disclosed as an expense in the debtor's budget at Item K of the Explanatory Statement.

Where a debtor receives child support, this should be disclosed as income at Item H on the Explanatory Statement.

Garnishees and debt agreement proposals

If a garnishee order is in place prior to a debtor lodging a debt agreement proposal, upon notification that a debt agreement proposal is in voting, creditors must suspend the garnishee in line with sub-section 185F(1)(c) of the Bankruptcy Act. The debtor is entitled to the money during the voting period of the debt agreement proposal. Once the voting outcome has been determined, if the proposal is accepted by creditors, the garnishee must be withdrawn. Where the proposal is rejected by creditors, the creditor may recommence the garnishee.

It is recognised that in some cases it is administratively not possible to stop a garnishee in a short timeframe. When this occurs it is expected that creditors will still refund the funds collected relating to the voting period, to the debtor.

Accurate disclosure of debts on proposals

We have recently seen instances where after debt agreement proposals have been accepted by creditors, undisclosed creditors are identified. In some cases the undisclosed creditor has proposed a termination of the debt agreement even in instances when the debtor is up to date or in advance with their debt agreement payments. To attempt to limit the number of instances where this might occur, administrators need to ensure that they are asking the right questions when working with debtors on the debt agreement proposal to ensure that the debts disclosed on the proposal are accurate. Failure to do this could see the debt agreement terminated.

Explanation of debtor's circumstances

Item L of the Explanatory Statement allows the debtor to explain their circumstances to their creditors to assist creditors in understanding their personal situation. We are seeing on some proposals that the debtor's circumstances are not being explained, generic statements are appearing on debtor's documents or the comments do not relate to the debtor. This frustrates creditors when considering the proposal for voting as they have difficulties in determining what the debtor's circumstances are.

Taxation Refunds

We have had some recent cases where debtors expecting tax refunds have found the expected credit has been applied by the Australian Taxation Office (ATO) to their prior taxation debts. The Australian Taxation Office (ATO) has advised that this is their policy only in the case of debt agreements entered into after 30 June 2007. The ATO has advised that it has an entitlement to offset credits against prior debts. Given that for debt agreements entered into after 30 June 2007 the debt isn't discharged until the agreement is completed so a debt remains which future credits can offset, consistent with how it applies in bankruptcy matters, until the debt is discharged by law. The ATO have advised that this isn't the case with pre 1 July 2007 agreements where the debt is discharged on acceptance of the agreement by creditors and hence there is no debt against which the ATO will offset any subsequent credits.

Administrators should inform debtors who are basing their proposal on an expected refund of this position.

Voting on proposals

When completing the Claim and Voting form for proposals, only the Claim and Vote form needs to be returned to the Debt Agreement Service. In some circumstances, you may receive a call from us to clarify and confirm the details on your Claim and Vote form and further information may be required.

eSolve Phase 3 Debt Agreements

The Debt Agreement Service reached a significant milestone with our functional specifications being signed off. Our IT specialists have commenced work on developing eSolve Phase 3. However due to financial restrictions and competing priorities, including the possible introduction of the Bankruptcy Legislation Amendment Bill, implementation of Phase 3, which includes Electronic Data Transfer, is not now likely to occur until the second half of the 2010 calendar year. There may however be some elements of on-line services which will be implemented before 30 June 2010. If you have any questions, please continue to direct them to George Quarmby IT Project Manager on 02 6270 3459 or email to george.quarmby@itsa.gov.au or Vanessa Goodey on 07 3360 5435 or vanessa.goodey@itsa.gov.au

Feedback

ITSA values feedback about any aspect of the debt agreement system. Andrew Robinson, National Manager of the DAS can be contacted on (07) 3360 5401 and Vanessa Goodey, Assistant National Manager on (07) 3360 5435. Please continue to direct your queries on individual proposals to the DAS team.

Christmas Wishes

On behalf of ITSA and in particular the Debt Agreement Service I wish you all a joyous and safe Christmas period and a prosperous New Year.

Do you have a question about the law and practice relating to proposals which we can answer in the newsletter?