

Answers to how payments from the COVID-19 Economic Response Package are treated in Bankruptcy

The Government has responded to the COVID-19 pandemic by introducing measures to mitigate the devastating negative economic impact that it has caused to business and individuals in a very short space of time. The stimulus packages are intended to assist individuals, households and businesses to meet financial obligations and maintain stability during these times of uncertainty.

For some the stimulus measures won't be enough and they unfortunately face the prospect of bankruptcy to deal with unmanageable levels of debt. This raises the question of how the various stimulus measures for individuals would be treated in the context of a person's bankruptcy.

ECONOMIC SUPPORT PAYMENTS - At the time of writing this article, these represent:

- The first \$750 Economic Support Payment to eligible individuals to be paid from 12 March 2020 to 13 April 2020.
- The second \$750 Economic Support Payment to eligible individuals to be paid from 13 July 2020.
- Crisis Payment paid to individuals in severe financial hardship paid at one week of base income support payment rate.

These payments are protected in the event of bankruptcy. If the payments remain as cash or if they are applied to the purchase of an asset these are still protected. Regardless whether the payments were received before or after the date of bankruptcy, they remain protected and are not recoverable.

COVID-19 SUPPLEMENT PAYMENTS - At the time of writing this article, this is the temporary fortnightly \$550 extra payment to eligible recipients commencing from 27 April 2020.

Payments received before the commencement of bankruptcy, and which remain in the individual's bank account on the date of bankruptcy may be recovered by the Trustee for the creditors.

During the course of the bankruptcy, any payment will be included in the after-tax income assessment for income contributions payable to the bankrupt estate. If the after-tax income exceeds a set amount, the individual may be required to pay compulsory payments from their income to the Bankrupt Estate. The current threshold after-tax income for an individual with no dependents at which they start to become liable to pay contributions from their income to their Bankrupt Estate is \$59,031.70. The threshold increases based on the number of dependents.

EARLY ACCESS TO SUPERANNUATION – Eligible individuals can apply to receive tax-free early release of funds held in their superannuation account. The withdrawals of up to \$10,000 will be available from mid-April 2020 and another application can be made for a further \$10,000 from 1 July 2020.

If these payments are received prior to bankruptcy and remain in the bank account, they are considered to be an asset of the bankrupt estate and able to be recovered by the Trustee. On the other hand, any early access superannuation payments received after the commencement of bankruptcy will be protected and not available to be recovered by the Trustee. This protection extends to any assets which are purchased with superannuation funds received after bankruptcy.

It would be highly recommended that any individual who is eligible and entitled to receive any of these payments, keep any documentation relating to the receipt of the payment, and how and funds received were disbursed, for the Trustee to review and consider whether the assets or funds are protected and do not vest in the Bankrupt Estate.

If you or your client are concerned about the implications of any of these payments, particularly if bankruptcy is being considered, please contact us at Shaw Gidley and talk with an experienced, independent advisor for a confidential and informal discussion catered to unique individual circumstances.

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