

## **CASH BUSINESS IN THE FAMILY COURT**

Family law property settlements often involve the valuation of a family business. Occasionally, the financial records of the business do not add up to the lifestyle or spending habits of one or both of the spouses in the business, leading the Court to reach the conclusion that business income has not been properly disclosed.

### **DISCLOSURE:**

When spouses commence negotiations in relation to family law property settlements, both spouses are under an obligation to provide 'full and frank disclosure' of all matters which are relevant to their financial circumstances. It is not uncommon for separated spouses to already have difficulties trusting the other spouse and therefore allegations of lack of proper disclosure are common.

Where a spouse has failed to make adequate disclosure, or where the Court makes a negative finding about the credibility of one of the spouses, the Court can attribute 'notional' income and/or assets to that spouse.

In extreme cases, if the Court is of the view that there has been wrongdoing in relation to the declaration of income to the taxation department, the Court can and has referred matters to the ATO for further investigation as demonstrated in the following case.

### **CASE:**

The Federal Magistrates Court recently heard a case on an interim basis involving an application for property division and spousal maintenance.

The Wife said she had a need for urgent spouse maintenance and the Husband sought to have the Wife's application dismissed. Further, the Husband claimed that he was in ill health and that his financial position was such that he did not have the capacity to support the Wife.

One of the matrimonial assets included a business operated by the Husband. It was alleged by the Wife that the business received undisclosed 'cash' income which had rarely been accounted for during the marriage and therefore, the Husband's estimate of his income was not truthful.

The Court found that the evidence of the Husband was enough to suggest that his level of spending dramatically exceeded the income and assets that he had disclosed. The Husband travelled overseas extensively and his bank account statements showed a level of spending during overseas travel that was described by the Federal Magistrate as 'anything but modest'.

The Court was satisfied that the Husband had some form of additional income or access to funds which would allow him to satisfy a spouse maintenance order.

The Court referred the matter to the ATO, stating "The Court cannot ignore evidence that so clearly suggests wrongdoing and the community has a reasonable expectation that such matters will not be ignored".

### **SUMMARY:**

This case emphasises the importance of making 'full and frank disclosure' of your financial circumstances and ensuring that any business affairs are 'above board'. When filing court documentation in relation to income, assets and liabilities it is important to review those documents to ensure that they are consistent with other evidence put forward and that any discrepancies are properly explained to the Court.