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### **DECEASED ESTATE TAX RETURNS**

If you have been appointed as an Executor of an Estate, you must ensure you complete all your duties as an Executor which includes the lodgment of:

- a final Tax return for individuals (called a 'date of death tax return') on behalf of the deceased person or advise the ATO that a tax return is not necessary;
- lodge prior year Tax return for individuals for the deceased person;
- a Trust tax return for the estate if applicable.

You need to lodge a date of death tax return on behalf of the deceased person if they:

- had tax withheld from the income they earned;
- earned taxable income exceeding the tax-free threshold;
- had tax withheld from interest or dividends because no TFN was quoted to the investment body;
- lodged tax returns in prior years (that is, for income years before the income year in which they died);
- should have lodged tax returns in prior years.

If you complete the administration of the deceased estate in the same income year as the date of death, you will not need to lodge a Trust tax return for the deceased estate if both of the following apply:

- No beneficiary is presently entitled to any of the estate's income of the estate;
- The taxable income of the estate is below the tax-free threshold for individuals.

Otherwise, you must lodge a Trust tax return for the income year.

**Meehans** can assist you in all your Wills/Estate Planning and Probate needs, give us a call at any one of our offices.

### **FAMILY LAW HEARINGS**

#### ***What do you do when the other spouse refuses to show up to Court?***

Under the Family Law Act, a trial in the Family Court of Australia or the Federal Circuit Court of Australia takes place with both the applicant and respondent having filed evidence.

In parenting cases, the court makes a decision based on the admissible evidence that is in the best interests of the children. In property cases, the court makes a decision based on admissible evidence to distribute the property of the relationship (including superannuation) so as to achieve a result that the court considers to be just and equitable.

In a comparatively small number of cases, the other spouse may refuse to provide financial disclosure in property cases or may

simply not show up to court in a parenting matter.

In those circumstances, the court can make directions for the proceedings to be decided by a judge on an undefended hearing. That means that the applicant needs to file all of the evidence to satisfy the court that final orders should be made.

In property matters, this can pose a difficulty where there has been a failure to disclose all property by the other spouse. If the other spouse runs a business, the court must be satisfied as to a valuation of the business in determining the asset pool prior to distribution.

It is most often the case in an undefended hearing that an application is made for the other spouse to pay the costs of the applicant. That application is not always successful as the opening position under the family Law act is that each party pays their own costs. If a court is satisfied that one spouse's conduct has been unreasonable then a costs order can be made.

It is not often that a matter proceeds to an undefended hearing as most spouses tend to file their documents with the court to avoid an undefended hearing.

Before any proceedings are commenced under the Family Law Act, careful consideration needs to be given as to the possible outcomes including an early negotiated settlement, a contested hearing (which will on present delays in the court system take at least two years from the date of filing of the application), or if the circumstances allow the proceedings may be listed for an undefended hearing.

If you need any advice in relation to Family Law issues then please contact **Sean Cahill** who is an **Accredited Family Law Specialist**.

## MEEHANS SOLICITORS

171-179 QUEEN ST.,  
CAMPBELLTOWN  
PHONE: 46 27 3333

OR

2/31 OXFORD ROAD,  
INGLEBURN  
PHONE: 9829 3333

HELPLINE 0418 37 32 37



(Paul Meehan – Principal)

Visit our website:-

Website: [www.meehans.com.au](http://www.meehans.com.au)

Email: [info@meehans.com.au](mailto:info@meehans.com.au)

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