CAPITAL GAINS AND OTHER TAXES: THEIR RELEVANCE TO FAMILY LAW

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Contingent taxation liabilities

In determining property issues the Family Court has to identify and take into account the relevant assets and liabilities of both of the parties to the marriage and any corporate entities which they control. The valuation of assets can be a difficult exercise. The evaluation of liabilities, particularly where they have not crystallised, is no easier.

The test adopted by the Family Court for the evaluation of contingencies is that expounded by Lord Reid in *Davies v Taylor*,[1] ie, whether the eventuality is 'substantial' or merely 'speculative'. The exercise is a discretionary one to be decided on broad lines, without regard to legal niceties, but on a consideration of all the facts in proper perspective. If the contingency is a probability it must be evaluated. If it is a mere possibility it must be ignored: *Hickman v Hickman*;[2] *Page v Page (No 2)*.[3]

Example

H controlled a company in liquidation on the petition of the Taxation Commissioner. The assessed liability was $153,794.00 and it had sufficient assets to meet that assessment. The assessment was disputed, and the dispute had not been resolved at the time of hearing. W argued that the liability was contingent only, and that, if H won the tax battle, he would save the tax and the assets of the company would revert to his control. H argued that it was a real liability and should be deducted from the assets. *Held:* after hearing evidence as to the likelihood of success on the issue that it was an absolute liability and should be treated as such.

Example

H, through a trust, had entered into two taxation schemes. Both were disallowed and were subject to appeal. If they failed the trust would have a tax liability for $76,000.00. H argued that this should be treated as an absolute liability. On the evidence of his accountant, however, it appeared that if the schemes failed the trust would have quite a significant number of years to meet that commitment and in the end may not have to pay it at all. *Held:* that the alleged tax liability should be disregarded.

1 [1974] AC 207, 212.
2 (1979, unreported).
3 [1982] FLC 91-241.

Where the liability cannot be determined or a reasonable estimate made of the probability of it becoming payable, the Court may use its discretion to adjourn the proceedings until it has crystallised; *Prince v Prince*;[4] *P v P (tax evasion)*.[5]

Example

In *Prince* there were property proceedings between the parties to the marriage in the Family Court. In the course of those proceedings a finance company instituted proceedings in the Supreme Court of Queensland against H and others seeking payments of approximately $9 million under a guarantee supporting a mortgage. H defended those proceedings. The Full Court of the Family Court held that the question of H's liability under the guarantee should be determined by the Queensland Supreme Court before the wife's property application was heard as the size of his estate, and therefore the wife's entitlements to property settlement, could not be determined until his liability had been clarified.

The extent to which the Courts are willing to make of the cross-vesting scheme to deal with issues of this nature is yet to be seen.

Taxation offences

In the course of property proceedings the Court may conclude that the parties have engaged in tax evasion. Such a finding may give rise to an unexpected taxation liability. In *T v T*[6] the trial judge found that the parties had engaged in tax evasion and stated that he proposed to direct publication of his judgment to the appropriate Commonwealth legal authority. The Full Court on Appeal upheld his right to do so, and stated that it may be a failure of public duty to do otherwise.

In *P v P*[7] the trial Judge found that he had a positive duty to report the matter to the Commonwealth Attorney-General for consideration of whether proceedings should be commenced against either party for recovery of unpaid taxes. He held that the Family Court, as a Federal Court exercising the judicial power of the Commonwealth, has a duty to protect the revenue of the Crown and to take such steps as it was able to ensure that the revenue laws of the Commonwealth are not defrauded or evaded by litigants or others who come before it. He rejected an argument that the existence and exercise of such a duty would seriously erode the principle against self-incrimination and stated that if a litigant is of the opinion that disclosure of information normally required of him by the Court may tend to incriminate him, he is at liberty to take proper objection to making such disclosure on that ground.

P v P appears to overstate the position. It is submitted that the correct position is that the Court has power to bring the matter to the attention of the authorities in an appropriate case. However, this is a discretionary power and there is no absolute duty on the Court to do so. To suggest otherwise would be to place the judges of the Family Court in a position of exercising administrative as well as judicial roles in the same matter.

4 (1984) FLC 91-501
5 (1985) FLC 91-605
6 (1984) FLC 91-588
7 Above n 5.

The problem was noted by the Family Law Council in its consideration of the interim report of the Australian Law Reform Commission on *Reform of the Law of Evidence.* It noted the conflict between privilege against self-incrimination and the obligation to make full financial disclosure in Family Court proceedings. It concluded that in this conflict the principle of full disclosure should be paramount. That appears to be an appropriate approach. The Court should err on the side of caution and be reluctant to create a climate where proper disclosure of financial matters is discouraged. That is not to say that in appropriate cases blatant offences against the taxation legislation should not be published to the authorities, in the same way that gross acts of perjury or other significant criminal offences are from time to time directed to the attention of the Attorney-General. It is a matter of looking at each case individually and seeing how the ends of justice and the objectives of the Family Law Act can be best served.

Access to Family Court information by Tax Commissioner

Section 121 of the Family Law Act restricts publication of information relating to Family Court proceedings. Section 263 of the Income Tax Assessment, however, entitles the Commissioner to have full and free access to all buildings, places, books, documents and other papers for any of the purposes of the Act and to make extracts or copies from them. Section 264(1) empowers the Commissioner by notice in writing to require any person (including any officer employed in or in connection with any department of a government or by any public authority) to furnish him with such information as he may require and to produce all books, documents and other papers whatever in his custody or under his control.

The Commissioner takes the view that the provisions of the Income Tax Assessment Act override the provisions of the Family Law Act and that s 121 does not protect Family Court files from his scrutiny. In at least some Family Court registries the Commissioner has been given access to Family Court files on this basis. Certainly the prudent practitioner should be aware of these provisions and work on the basis that material filed in the Family Court is not safe from the Commissioner's notice.

There is also nothing to prevent the Commissioner having his representatives sit in Court to observe the proceedings and to hear the evidence. Although his resources do not permit this to be done, as a matter of routine it happens from time to time. It is a possibility of which practitioners should be aware, particularly where there is a likelihood of the Commissioner being tipped off by a disgruntled spouse.

It is noted that similar conflicts arise under, inter alia, the Social Security and the Repatriation legislation.

The effect of income tax on the valuation of assets

It is essential that practitioners are aware of the effect of a settlement on taxation liabilities.

Example

W was the primary shareholder in a company with $500,000.00 in retained profits. If they were paid out to her by way of dividend they would be taxable at personal rates and would be worth only a fraction in her hands. The value of the asset was, accordingly, substantially diminished. It had, however, a degree of intrinsic value to H who could use it in complex inter-company arrangements; he was prepared to pay a premium to assume the wife's shares.

Example

H was a farmer. He owned cattle valued for taxation purposes at $130 a head but with an average market value of $350 a head. If the cattle were to be sold there would be a substantial profit taxable at 49% with a similar provisional tax liability. While the latter could no doubt be varied, the overall tax impact had to be taken into account.

Example

H owned plant and equipment which had been written down to a great deal less than their disposable value. If sold or disposed of at a clearing sale a substantial primary (and potentially provisional) tax liability would arise. The 'value' of such assets needed to be adjusted to take account of these factors.

The taxation effects of a proposed settlement are something which the prudent practitioner should always have in mind.

Minimization of income tax by retention of financial structures

In Australia, maintenance is taxable in the hands of the payer and not the receiver, and is paid out of after-tax income (cf the United States, where payments are tax-deductible in the hands of the payer and are taxed in the hands of the receiver). The end of the marriage accordingly does not necessarily mean the end of the usefulness of a family company or trust. In certain cases it may be appropriate to maintain the children through the trust or even, given the penal rates which apply to distributions to children under 18 years, to retain the wife as a discretionary beneficiary and to pay moneys through the trust to her for the benefit of the children.

Where the wife is a shareholder or office bearer of the company it may be legitimate to retain this situation and to pay her dividends, a salary, or other benefits in lieu of maintenance. It should matter little to the wife how she receives financial support for herself and the children, provided that it is net in her hands and free of tax.

In situations such as these, a maintenance order should be expressed along the lines that the husband 'pay or cause to be paid $X a week' and should also relieve the husband from his personal obligation to pay maintenance to the extent that the moneys are received, free of tax, from the company or trust.

Even where the wife is to be removed from the financial structures, consideration should still be given as to when and how this should be done. Where the trust has substantial income to distribute, it may be desirable to retain the wife as a beneficiary in relation to the relevant

financial year and spread the taxation load by incorporating the distribution as part of her settlement entitlement, subject to an appropriate tax indemnity.

The possible continuing use of family financial structures should always be considered and explored, especially where the relationship between the husband and the wife remains relatively harmonious.

Family maintenance trusts

A special aspect of the continuing use of family financial structures is the family maintenance trust. Special rules were inserted in the Income Tax Assessment Act in 1980 to discourage income splitting by diversion of income to children under 18. These rules are set out in Division 6AA. They impose higher than normal tax rates on unearned income of unmarried minors; for 1986/1987 the minimum rate was 46% on income over $416.00 per annum. The net effect is to make it generally uneconomic to distribute or alienate income to a child under 18. Section 102AG extends these general rules to infant beneficiaries of trusts—distributions in excess of $416.00 per annum are taxable at the penal rates. However s 102AG exempts from the assessable income of a trust estate income received as a beneficiary to the extent to which the amount is received subject to a Family Court decree or order.

This has been taken to permit the establishment of family maintenance trusts to enable the payment of maintenance from trust income without attracting penalty tax. It is not appropriate in many cases; it will often be best to pay income to the wife if she is not earning too much. However it may be valuable where there are considerable assets, the wife has a high income and there are young children to be maintained.

The desired effect may be created by settling any income-earning asset (eg cash, property, or shares in a family company from which dividends may be received).

Care must be taken not to fall foul of the anti-avoidance provisions of the Income Tax Assessment Act, including s102 which provides that, where a power is retained to revoke or alter the trust so as to acquire a beneficial interest in income or property, the Commissioner may assess tax to the trustee; s 102AG(3) which deals with the situation where the parties are not at arms length and the child receives a greater amount of income than would otherwise have been the case; and s 102AG(4) which provides that a trust is ineffective for the purposes of Division 6AA if it results from an agreement entered into for the purpose of ensuring that the assessable income would be exempt trust income.

For maximum effectiveness it is suggested:

- That it be a genuine arm's-length settlement of some substance, with H retaining no actual or reversionary control.
- That there be an actual settlement which is itself part of a Court order (to be made either in a lump sum or over time).

- That the purpose of the trust be recorded as a notation to the Court order (eg H has assets now which he may not have later; H's desire to secure the children against the risk of business fluctuations).
- That the form of trust deed be annexed to the Court order including names of guardians, appointors etc (to obviate any claim by W that she should control the fund).
- That power be retained to appoint additional corpus and income beneficiaries to deal with future contingencies (eg if a child dies, becomes a drug addict, or demands the assets on attaining adulthood).

Superannuation

All superannuation funds have a tax aspect which should be taken into account in calculating the entitlements of a party. The basis of calculation of tax on superannuation and retirement payments changed with effect from 1 July 1983.

Generally speaking the pre 1 July 1983 component is taxed at 5%. It is not taxed at all upon receipt if it is rolled over into an Approved Deposit Fund or an annuity; it only becomes taxable in those circumstances if it later comes to the taxpayer in taxable form, eg as annuity payments or a payment out from the ADF.

The post 1 July 1983 calculation of income tax liability is a complicated one, separating out pre and post 1983 components: s 27 B (1). Broadly speaking, the post 1983-component is calculated as follows:

(a) where the recipient is under 55 years of age—not more than 30%;

(b) where the recipient is over 55 years of age—not more than 15% on the first $55,000.00 and not more than 30% on the balance.

The latter will eventually become tax-free on the first $60,000 and 15% thereafter, as a result of further sweeping changes to superannuation tax rates and benefits subsequently announced by the Treasurer.

These changes include:

- Significant reductions in and benefits from up to 7 times final annual salary to a 'reasonable benefits' scale;
- A 15% tax on employer contributions;
- The cut of 15% on tax levied on end benefits;
- A 15% tax on investment earnings of funds;
- The extension of tax-deductible limits for private contributions from $1,500 to $3,000 per annum.

The effect of these changes on calculation of superannuation benefits and how they should be taken into account require careful consideration.

There are three basic types of fund:

(1) Defined benefit funds (where members are promised a multiple of final salary);

(2) Accumulation or 'bank account' funds (where each retiree gets a share of the fund's total investment return); and

(3) Capital guaranteed funds (accumulation funds which guarantee a return of capital).

The changes are likely to lead many major companies to switch from defined benefit to accumulation funds (at least for wages employees). Many public sector schemes (which permitted end benefits of up to 8.4 times final salary and high pensions) will be caught by the 'reasonable benefits' limits for service after July 1990, and 'golden handshake' arrangements will be similarly affected.

All service prior to 1 July 1988 retains rights to the previous full lump sum multiples (7 times for retirement at age 65; 6.125 times at 60). However, for service after 1 July 1988 multiples will be reduced as end salary increases (7 times up to $35,000; 5 times $35,001—$65,000; 3 times over $65,000). The scale for pensions allowed on final average salary will be similarly affected (75% up to $35,000; 55% $35,001—$65,000; 35% for that portion of salary over $65,000). The lump sum scale applies where more than 50% of the total benefit is taken as a lump sum. However, employee contributions after July 1983 will not be included in the benefits to which the limits apply.

Fringe benefits tax

FBT does not have any great significance for family law settlements. Its only real relevance is in situations where maintenance has been structured in such a way that the wife has the continuing use of a company car, or a car lease, petrol, telephone or other expenses are met through a company or trust on her behalf. In that event FBT would be attracted, and its existence may mean that it is no longer financially beneficial for the wife to be assisted in that manner.

Capital gains tax

Part IIIA of the Income Tax Assessment Act ('the Act') deals with capital gains and capital losses resulting from the disposal of assets. This is a highly complex piece of legislation covering more than 100 pages of detailed provisions. There are a number of specific CGT considerations which apply to family law property settlements.

CGT is, in general, payable on gains made where there is a disposal of assets acquired on or after 20 September 1985. It is not payable where the asset was acquired prior to that date. 'Disposal' is widely defined as any change in ownership (s 160M). 'Asset' is equally widely defined as any form of property (s 160A). The capital gain is the difference between the value of the asset at the date of disposal and its original cost base calculated in accordance with s 160ZH, indexed in line with CPI movements.

No tax liability arises until there is an actual or constructive disposal. The gain is then included in the taxpayer's taxable income for that year and taxed:

(a) in the case of a company, at ordinary company tax rates;

(b) in the case of an individual or a trust, under a special prorated or 'averaging' procedure by:

   (i) applying standard marginal rates to the non-CGT income;

   (ii) determining the extra tax payable by including in the taxable income 20% of the CGT income;

   (iii) multiplying the extra tax by a proration factor of 5;

   (iv) adding the result (the tax payable or the net CGT component) to the non-CGT component.

CGT exemptions relevant to family law

(1) The Matrimonial Home.

The principal residence of a taxpayer is generally exempt from CGT: s 160ZZQ. The matrimonial home is accordingly in normal circumstances not subject to CGT as it will usually be the principal residence of the parties. It is, however, unsafe automatically to assume this to be the case and there are numerous potential exceptions including where:

- the parties maintain separate principal residences (eg one remaining in the home and the other living in a jointly-owned investment property).
- both parties leave the home and rent it out so that it is no longer the sole or principal residence.
- the home is transferred in whole or part to children.
- the home and adjacent land exceeds two hectares—the exemption is limited to a house and two adjacent hectares and particular problems may arise in respect of 'hobby' farms.
- part of the home has been used to generate income (eg a home office or doctor's surgery).
- part of the land is disposed of separately from the home (eg the land is subdivided and part transferred to one spouse by way of property settlement).

The exemption in respect of principal residences initially applied only if the property was owned by a natural person. It did not apply to a property held by a trustee. Where the family home was owned by a trust and there was a 'disposal' of that property by way of change of ownership, then CGT would apply. However, it was potentially possible to overcome that problem in a genuine family breakdown situation by transferring capital of the trust.[8]

The Act has now been amended with effect from 28 January 1988 by the insertion of s 160ZZMA. This provision extends roll-over relief to assets transferred from a trust or company to a spouse

8 See Taxation Ruling IT 2340.

under a Family Court order or approved s 87 agreement, with the effect that from that date the transfer would not attract CGT.

A home which was sold without having been occupied by the owner for more than 12 months was also initially caught under s 26AAA of the Act for tax on any profits (unless special circumstances, eg a transfer in employment, applied). However this provision was abolished with effect from 25 May 1988 (the date of the May Economic Statement) and any principal residence sold within 12 months enjoys the same exemptions for CGT as any other sale.

(2) Proceeds from superannuation and life assurance policies.

(3) Assets used principally for personal use valued at less than $5,000.00 (but not antiques, paintings, jewellery etc).

(4) Most classes of motor vehicles.

(5) Payments received from a superannuation fund or an Approved Deposit Fund.

(6) Trading stock (which is taxed under ordinary income provisions).

(7) Goodwill (to the extent of 20% of the taxable capital gain realised on the disposal where the business assets are valued at less than $1 million).

Special provisions for transfer of assets other than exempt assets between spouses on marriage breakdown.

Section 160ZZM provides a degree of roll-over relief where assets including real property which are not within the exempt classes referred to above are transferred between spouses by way of Family Court order or s 87 agreement.

The effect of the roll-over provisions is simply that any gain or loss at the time of transfer is ignored and the tax consequences deferred until any later disposal of the asset which attracts Part IIIA.

If the asset was acquired before 20 September 1985, the spouse to whom it is transferred is deemed to have acquired the asset before that date and it retains its tax-sheltered status in the hands of that party. If it was acquired on or after 20 September 1985, the spouse is deemed to have paid consideration equal to the indexed cost base in the event of a subsequent sale; no tax is payable at the time of transfer and a liability only arises in the event of a later disposal. It should be noted that this shelter does not apply to transfers between spouses under a s 86 agreement.

The effect of 160ZZM depends on whether the relevant asset was acquired before or after 20 September 1985.

Example

H acquires land before 20 September 1985 and transfers it to W under a Family Court order or s 87 agreement. W is deemed to have acquired it before 20 September 1985 and no CGT is payable if she subsequently disposes of it.

Example

H acquires land in January 1986 for $50,000.00, including purchase costs and duty, and transfers it to W in January 1987 under a Family Court order. The CPI movement over the 12 months has been 10%, giving an indexed cost base of $55,000.00, which is deemed to be the consideration paid by W. She sells the property in January 1988 for $65,000.00 net of commissions etc. CPI has increased a further 10% giving an indexed cost base of $60,500.00. W will therefore be taxed on a net capital gain of $4,500.00.

Calculating the cost base

In calculating the cost base it is necessary to take into account not only the purchase price but also various other factors including:

- the incidental acquisition costs including stamp duty.
- the cost of capital improvements.
- the capital costs of establishing, preserving or defending title or to rights over the property.
- the incidental costs of disposal.

It is, accordingly, important to ensure that in circumstances where CGT may become relevant on a subsequent disposal the transferring spouse hands over all records relating to the original acquisition and deductible expenses so that the cost base can be accurately calculated.

Personal assets

The general exemption from CGT of personal assets valued at less than $5,000 does not extend to a number of items which are of a kind which might be expected to increase in value, (eg antiques, works of art, jewellery, rare books, stamps and coins) where the cost of acquisition exceeds $100. These are referred to as 'Listed Personal Use Assets' and CGT may be payable on their subsequent disposal.

Section 160ZZM (1) (b) shelters them if acquired before 20 September 1985 and provides roll-over relief if acquired after that date. However, antiques, paintings and the like can represent a very substantial matrimonial asset and, where there is a possibility of CGT on a future disposal of the items by the receiving party, they should be carefully valued and an allowance made for that liability.

Family trusts, partnerships and companies

Sections 160ZZS and 160ZZT are two general anti-avoidance provisions intended to prevent taxpayers side-stepping the CGT exposure of assets acquired after 20 September 1985. They seek to look through interposed chains of companies, partnerships or trusts and determine whether there has been a change in the effective interest of natural persons in the assets.

Section 160ZZT applies where an individual disposes of shares in a private company, an interest in a partnership, or an interest in a private trust estate acquired prior to 20 September 1985. It deems there to be a disposal of the 'underlying property' where 75% or more of the net worth of the entity is comprised of property acquired after 20 September 1985 and a capital gain is deemed to have accrued during the year of disposal.

Under s 160ZZS an asset held by a company or trust before 20 September 1985 is deemed to have been acquired after that date if there is a subsequent change in the 'majority underlying interests'. For this purpose ownership is traced to the natural persons who are ultimately beneficially entitled.

Example

H is majority shareholder in a family company, which owned real estate prior to 20 September 1985. If the company sold the land no CGT would be attracted. However, if H transfers his shares to W under a family law settlement, then the company is deemed to have acquired the land after 20 September 1985 and it becomes vulnerable to CGT, notwithstanding that the ownership of the land by the company has not changed. The problem would not arise if H was not a majority shareholder and there was no change in the majority underlying interests.

Careful consideration needs to be given to CGT implications where any change of ownership in a company, trust or partnership is contemplated in a family law settlement.

Transfer of real assets subject to encumbrances

It should be noted in dealing with the CGT aspects of family law settlements that under s 160S(2), even though the property transferred is subject to a mortgage loan or debt, CGT applies to the transfer of the property as though it were unencumbered. The full amount of the liability assumed by the purchaser is treated as part of the purchase price and tax calculated accordingly.

Conclusion

In all transfers arising out of a family law property settlement, CGT considerations need to be recognised and, where appropriate, the value of the property being taken by a spouse discounted to recognise any possible future CGT liability which would arise in the event of a subsequent disposal of those assets. In those circumstances it would be appropriate to calculate the amount of CGT which the transferring spouse would have paid if the asset had been sold for market value instead of being transferred as part of the settlement, and to allow compensation in the Family Court order or agreement for that future liability in the hands of the receiving spouse.

Stamp duty

Section 90 of the Family Law Act 1975 sought to exempt from State stamp duty transfers of property subject to Family Court orders or agreements under s 86 or s 87 of that Act. However the High Court held in *Gazzo's* case[9] that this provision was unconstitutional and invalid.

A modified s 90 was introduced in the 1983 amendments. This, however, has not been tested and, as a result of amendments to State legislation and procedures, no duty is normally payable in any event on

9 (1981) FLC 91-101.

transfers between spouses where there is a bona fide matrimonial breakdown.

In Victoria, for example, Part VI of the Third Schedule to the Stamps Act provides exemptions in respect of inter alia:

- any instrument for the conveyance of real property where the parties concerned have been married to each other and the Comptroller of Stamps is satisfied that the instrument was made by reason of the breakdown of the marriage.
- any instrument conveying real estate to a trustee under an instrument of settlement made by reason of the breakdown of the marriage of the settlor where the transferor is or was a party to the marriage and no person other than a party or a child is a beneficiary of the trust.

Similar exemptions apply to transfers of marketable securities, motor vehicles and instruments of settlement. The net effect is that no duty is payable where assets are transferred upon marriage breakdown between parties to the marriage. The exemptions do not, however, apply where the property is owned by or transferred to a third party such as a company, trust or a stranger to the marriage.

Each of the other States has similar provisions. Most require that the marriage be dissolved or annulled before the exemption is granted, but provide a refund of stamp duty when this occurs. Western Australia, like Victoria, follows the practice that it is sufficient to show that the parties have separated and the bona fides of this are established by production of a Family Court order or agreement.

The provisions of s 90 have full force and effect in the Federal Territories. Accordingly, in the Northern Territory and the ACT all transfers under a Family Court order or a registered or approved agreement are exempt from duty.

A recent decision by Enderby J in the Supreme Court of New South Wales in *Bryan v Commissioner of Stamp Duties (NSW)*,[10] indicates that in that State a transfer from a trust to a party to a marriage under a Family Court settlement may be exempt from duty. However, that case depended on the particular provisions of the Stamp Duties Act (and in particular an exemption granted to transfers of matrimonial property under Family Court orders or agreements) and the fact that under the trust deed the trustee company held the property for the parties, subject only to a power to nominate additional beneficiaries which was never exercised. His Honour found that:

- The husband and the wife had a vested interest in the property (subject only to a possible defeasance if the company exercised its right of appointment);
- Real and effective control lay with the parties and they were the 'real' beneficial owners;

10 (1988) FLC 91-935.

- The property was accordingly matrimonial property by reason of the joint beneficial intent of the parties, and the transfer was accordingly exempt from duty.

An appeal by the Commissioner[11] was dismissed, the Court of Appeal holding that the combination of the equitable interests of the husband and the wife, the absence of any other interested person and the practical control exercised by the husband produced the consequence that the real estate was 'property of' the parties to the marriage. However this decision appears to have no application to States where the exemptions granted by the legislation are not based on a similar definition of 'matrimonial property' or are specifically limited to transfers between natural persons who are or have been in a legal or de facto marriage relationship.

In general, transfers of real or personal property between the parties to a marriage do not attract stamp duty when they take place under a Family Court order or agreement. However, where the property is transferred from a family company or trust to a party, or where third parties are involved, stamp duty implications may arise. Most States depend heavily on revenue from stamp duty and the amounts involved can be very substantial. The potential stamp duty implications of any settlement need to be carefully considered.

11 (1989) FLC 92-025.