

What debts are Extinguished by my Bankruptcy?

After you are discharged from bankruptcy you are released from most “provable” debts. You are not, however, released from any “non-provable” debts.

What is a Provable Debt?

A provable debt in the context of bankruptcy is a debt for which a creditor can claim or lodge a proof of debt in the bankrupt estate and receive a proportionate return of any funds realised in the estate by the trustee. Most debts for which a bankrupt is liable will be provable, however, there are a few broad categories of debt that are not provable and some that are provable but not extinguished by bankruptcy, see below.

What Debts are Not Provable

The main broad categories of debts that are non-provable and as a result not extinguished by bankruptcy are:

- Debts that were incurred after the date that the bankruptcy commenced;
- Court imposed fines;
- Amounts payable under an order made under a proceeds of crime law;
- HELP debts under the Higher Education Support Act 2003 (Cth); and
- Unliquidated debts. These are typically debts that are subject to a damages claim that has not been fixed in amount or otherwise agreed as to value prior to the date of bankruptcy

Other Debts that aren't Extinguished

Some debts are actually provable in the bankruptcy and as such entitled to receive a proportionate return of any available funds in the estate, but are not extinguished by bankruptcy. As such the bankrupt will remain liable for the balance of these debts after being discharged from bankruptcy.

The broad categories of debts that are provable but not extinguished are:

- Debts incurred by fraud;
- Debts under a maintenance agreement or order;
- Child support debts; and
- Debts relating to a bond or to certain other criminal law penalties

What Happens to my Tax Debt?

Tax debts that were incurred prior to the date of bankruptcy are provable and as such are extinguished by the bankruptcy. This is so regardless of whether or not they have been assessed by the Australian Taxation Office ("ATO").

Liabilities that haven't been assessed as at the date of bankruptcy are contingent liabilities which are provable in the bankruptcy.

Tax debts that relate to the period after the date of bankruptcy are not provable and not extinguished by bankruptcy.

Bankruptcy will normally commence part way through a financial year in which case the ATO can issue a tax assessment for the year to date. Once the bankrupt receives this separate assessment they should only be liable to the tax relating to the period after the date of bankruptcy.

Please note that any tax refunds that become due to a bankrupt during the term of the bankruptcy may be applied by the ATO against any debt that is due to the ATO for the period prior to bankruptcy.

Disclaimer

Please note that this is by no means to be taken as legal advice but rather our interpretation as registered Bankruptcy Trustees of the relevant legislation and in particular the Bankruptcy Act.

Further Assistance

We are more than happy to discuss any individual situations on a case by case no obligation basis. Should you have any queries please contact James Shaw or Paul Gidley on **1800 376 583** or via the chat line on our website at www.esolvency.com.au.

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