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Family Law Practitioners

Newsletter – impact of Douglas – a 2 minute read

The Douglas decision has major ramifications, and all practitioners need to be aware of this disruptor case. The impact is limited to military invalidity pension recipients.

The Full Federal Court decision in [Commissioner of Taxation v Douglas \[2020\] FCAFC 220](#) had major impact on the taxation of the invalidity pension for MSBS and DFRDB recipients commenced after 2007. Essentially, instead of taxing as an income stream, the payments are now taxed as a lump sum.

The impact is material for the recipient. The taxation per fortnight is reduced by up to 85%. In one particular case, the lifetime benefit of the ruling to the member exceeded \$0.5m. More typically, the lifetime benefit could be around \$0.25m for a 45 year old.

The impact is limited to those pensions paid after 2007 and arises because of the reviewable status of the pension. The ruling does not cover any associate pensions derived from a superannuation split due to the clean break provisions. So the decision would have no impact on the non-member spouse.

Prior to the Douglas case, a superannuation split meant that the taxation burden was split in proportion to the percentage split. So a 50% split to the non-member spouse would see the taxation burden being shared equally between the parties. Taxation as a separate consideration was not relevant.

Whilst the family law valuation is unchanged, - they are always gross of taxation (ie including taxation), it is now necessary to look at impact of taxation on both parties to arrive at an equitable outcome.

For invalidity pensions, compensation component does not feature in the property pool. This follows from the decision in *Welch & Abney [2018] FamCA 135 (6 March 2018)*, which was the retrial following the Full Court Case of *Welch & Abney [2016] FLC*.

Besides isolating the compensation component of the income stream, practitioners representing the non-member spouse should also address the after tax position of the parties.





specialising in superannuation valuations for family law purposes

Because the tax consequences are so material, there may even be a case of re-opening past cases.

The Douglas decision may also have an impact in other areas including, but not limited to, child support payments and spousal maintenance

Yours sincerely

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Director

