

The Tax Man Has a Long Memory

The Tax Man may have a very long memory but even he's not allowed to go fishing in the Family Court pond unless he can specify what as well as who he's trying to catch.

However the ATO was still partially successful in **Darling [2013] FamCA 118** which makes it abundantly clear that even if defused for family law purposes, documents filed in the Family Court remain taxation time bombs.

Mr and Mrs Darling finalised their property settlement proceedings by agreement in 2010 and went their separate ways, or so they thought.

In one of life's little ironies the Darlings were reunited by the Commissioner of Taxation when eighteen months later they jointly opposed his Application to the Family Court for the release and use of their court documents as evidence in an audit of their tax liabilities for the years since 1991.

The Court had previously given the Commissioner permission to inspect and photocopy particular documents from the Darling's file after their settlement was finalised. As the Darlings had not appealed against that decision the Commissioner was apprised of the information their documents contained.

When applying for the subsequent release and use of the court documents the Commissioner maintained that the information contained in them was relevant to:

the nature, value and sources of the husband's, the wife's and their children's and related entities' assets, income and expenditure during the relevant period.

The important remaining question was whether the ATO could use the documents as evidence of the information they contained.

While the judgment does not spell it out, it appears given the lengthy historical period to which the ATO's enquiry related, that the Commissioner was finding it difficult to audit the Darlings' affairs dating back to 1991 without being able to rely upon their sworn Family Court documents as evidence of the information they contained.

The fact the Family Court had determined that the Commissioner had a proper interest in the information he obtained from the Court file, did not automatically mean it could be used for reasons unrelated to the litigation for which it was prepared.

The Court observed that while parties in the Family Court are required to make full and frank disclosure, they are also entitled to some measure of privacy and it had to decide whether 'special circumstances' existed to justify permitting the ATO to use the information in the documentation as evidence for the general purpose of a tax audit.

Before the Court will find that special circumstances exist the Commissioner must be able to:

- specify the documents sought to be released;
- specify the purpose for which it is sought that the documents be released; and
- satisfy the Court that the special circumstances warrant the release of the documentation.

The Commissioner's general assertion that the documents were relevant to an audit of the Darlings' tax affairs was not considered specific enough to justify permitting the documents to be used as evidence in that audit.

However, despite be refused permission to use the Family Court documents as evidence in its pursuit of the Darlings, the ATO could still use the knowledge gleaned from having been able to access and read those documents to their significant detriment.