

## Overpayment: loans and special circumstances

LING AND LING and SECRETARY TO THE DFaCS  
(No. 19990797)

**Decided:** 26 October 1999 by  
J.A. Kiosoglous.

### Background

In 1988, the DW Ling Family Trust was established with both Mr and Mrs Ling listed as beneficiaries. In 1989 Mr Ling started a business and loaned to the Family Trust approximately \$230,000. At 30 June 1995 the balance of the loan was \$214,776 — which together with other loans, took the total loans to the Family Trust by Mr Ling to \$354,580.

The assets value limit from 1 July 1995 to 30 June 1996 was \$122,750. In August 1996 the DSS decided that Mr and Mrs Ling had been overpaid partner allowance and newstart allowance respectively, and raised debts accordingly. The decision was affirmed by an authorised review officer and in turn by the SSAT.

### The issue

The issues in this appeal were:

- what value should be placed on the loans?
- should the debt be waived?

### The evidence

Mr Ling's evidence was that he could not realise the loans, therefore they should not be valued. This was why he had not advised DSS about them.

The submission put on his behalf was that since the loans had no value they could not be defined as property. Instead they should be correctly defined as an unrealisable asset under s.11(12).

It was further argued that since Mr Ling acted in good faith there were grounds to consider special circumstances waiver.

Mrs Ling's evidence was that she had no understanding of the loan, the trust, her role as a beneficiary or anything to do with the business. She supported herself during the period in question and had never received income from the business. She had since separated from her husband and had an income of \$150 a week.

### The law

The issue of how the loan should be treated involved an assessment of ss.11

and 1122. Special circumstances waiver is covered by s.1227AAD.

### Treatment of the loan

The AAT concluded that the loan was a 'financial investment' and consequently a 'financial asset' for the purposes of s.9.

In assessing the value of the loan, the AAT applied s.1122 and concluded that the value of the loan was its face value, that is, the amount still owing. The AAT also found that the loan was 'property' for the purposes of s.11(1).

It was argued that the loan was 'unrealisable' under s.11(12) and therefore should be disregarded for the purpose of the asset test, but the AAT found that this provision was only relevant for the application of the financial hardship provisions.

As the loans were assets, they must be considered in the application of the assets test.

### Waiver

The AAT accepted that both Mr and Mrs Ling acted in good faith when filling in the forms. They did not have 'actual' knowledge that they were making false statements and consequently they did not 'knowingly' make false statements.

In relation to Mr Ling the AAT found that there were no uncommon, exceptional circumstances that could be described as special. Although his business had failed and he had several debts it appeared that Mr Ling would to some extent have repaid the debts in three years. The AAT decided to write-off the debt for 18 months.

In relation to Mrs Ling the AAT distinguished her situation on the grounds that she had no involvement in the business. It was found that there were special circumstances that justified waiver of part of the debt. The circumstances were:

- she had no awareness of the business and the financial arrangements;
- she relied on Mr Ling re the business and was unaware of the loan;
- because of Mr Ling's failure with the business, she was now suffering serious financial hardship with poor prospects for the future;
- she would have been entitled to social security benefits but for the loan; and
- the stress of the past years.

The AAT therefore waived the amount of the debt that exceeded Mr Ling's debt. The remainder was also written-off for 18 months.

### Formal decision

The AAT set aside the decision under review, and substituted a decision that:

- (a) the debt being partner allowance received by Mr Ling be written-off for a period of 18 months; and
- (b) that part of the debt being newstart allowance received by Mrs Ling of \$10,669 be waived, and the remaining debt of \$7,700.73 be written-off for a period of 18 months.

[R.P.]

## Partner allowance: overpayment; false statement in partner's NSA forms; waiver; administrative error

RUCHAT and SECRETARY TO THE DFaCS  
(No.19990596)

**Decided:** 13 August 1999 by  
Mr K. Beddoe, Senior Member.

### The issue

Ms Ruchat sought review of the decision by the respondent to recover \$1969 in overpaid partner allowance for the period December 1996 to June 1997. Ms Ruchat had advised the DFaCS of her de facto relationship but not of her partner's earnings, believing the relevant details to have been notified via her partner's newstart allowance forms.

### Background

On 10 January 1997 Ms Ruchat's partner lodged a claim for newstart allowance (NSA) and continued to lodge fortnightly continuation forms until June 1997, in each case disclosing employment and amounts of income consistent with those periods of work he notified. Ms Ruchat on 30 December 1996 lodged a claim for partner allowance (PA) in which she disclosed her de facto relationship and advised of her own last work details. The DFaCS contended that notices were issued to Ms Ruchat in December 1996 and again in March 1997 requiring her to notify of changes in her own or her partner's income. The March 1997 advice also required the DFaCS to be notified if the income as stated on the notice was incorrect. That notice in fact referred to Ms Ruchat's fortnightly income but