

**Part B      The Collection of Taxation Debts****15            WRITS/WARRANTS OF EXECUTION**

*The policy in this chapter is to be followed by Tax Office staff. We have made every effort to ensure it is technically accurate, but in the interests of clarity it has been written in 'plain English' and should not be read or interpreted like legislation. If you feel that something in the chapter is wrong or misleading, please advise the Tax Office.*

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**15.1        PURPOSE**

- 15.1.1      This chapter deals with writs or warrants of execution and discusses when these should be used.

**15.2        INTRODUCTION**

- 15.2.1      A warrant issued by a court, authorises the person to whom it is directed (usually the sheriff) to seize the property of the judgment debtor and, if the sums claimed plus costs are not paid forthwith, to sell the personal property seized and pay the amounts of the judgment debt and the creditor's costs to the creditor.
- 15.2.2      Broadly, if the warrant against the personal property of the judgment debtor is unsuccessful in satisfying the claim (there may be insufficient personal property which can be validly seized to satisfy the warrant), the creditor may then proceed to exercise the option of executing the warrant against the real property (for example, land) of the judgment debtor.
- 15.2.3      Where a debtor's residual interest in any property (net of any encumbrances and the entitlements of any co-owners) is sold, execution is in favour of the judgment creditor alone, rather than for the benefit of all creditors as is the case under bankruptcy or liquidation administrations.
- 15.2.4      Execution may result in some payment to be applied against the judgment debt where the debtor has minimal or no funds/liquid assets. Where a warrant is returned unsatisfied in whole or in part, the debtor commits an act of bankruptcy and the judgment creditor can present a creditor's petition to obtain a sequestration order against the debtor.
- 15.2.5      The judgment debtor also commits an act of bankruptcy in cases where a warrant has been issued under process of a court and any of the debtor's property has, in consequence, either been sold by the sheriff or held by the sheriff for 21 days.
- 15.2.6      Execution by way of a warrant for pre-sequestration debts is not permitted if a debtor is bankrupt. In cases where a judgment debtor company is in liquidation or has had an administrator appointed, a judgment creditor cannot proceed to execute judgment (via a warrant) except with the leave of the court.

**15.3        POLICY**

- 15.3.1      The use of warrants may be effective in most cases, particularly where the debt is not large and is not escalating, where assets belonging to the debtor have been identified or in some cases where assets cannot be

identified. A warrant may prompt a debtor to pay or enter into an acceptable agreement to pay the debt by instalments.

- 15.3.2 A decision on whether to proceed to a warrant after judgment would depend on the circumstances of each case. Warrants should be considered in the following circumstances:

- (i) when it can be established that the debtor has sufficient unsecured assets to satisfy the debt; or
- (ii) the debtor has equity in real estate, even if the equity is as a part owner/joint owner/tenant in common.

- 15.3.3 Some factors that may be taken into account before the issue of a warrant are:

- (i) if the property to be attached is owned jointly by the debtor with another person(s), a forced sale of the debtor's share (though difficult to achieve or to achieve for value) can be an effective recovery option. On the other hand, partition provisions in the property law Acts of some States may provide for a joint proprietor (purchaser) to force a sale of the whole property and split the proceeds between those proprietors;
- (ii) it has been ascertained the debtor does not have sufficient assets to satisfy at least a significant part of the warrant. Nevertheless, a warrant for partial satisfaction may prompt the debtor to make alternative arrangements to pay;
- (iii) a debtor's assets subject to a charge or goods held by the debtor, may be subject to a retention of title (or Romalpa) clause. This would normally be the case for corporate debtors, in which case the best course of action would be through winding up and/or action against the directors if appropriate;
- (iv) it is found that other creditors have already issued warrants against the debtor. As the warrants are treated by the sheriff on a 'first-in first-out' basis, it may be better to proceed straight to bankruptcy action in these cases; and
- (v) sections 33 and 35 of the *Defence Service Homes Act 1988* (formerly the *Defence Service Homes Act 1918*) provide that the Director must give consent to give effect to any transfer where the Defence Service Homes Corporation has some form of security (mortgage or contract of sale) over the debtor's real property.

- 15.3.4 Any offer of payment made by the debtor after issue of execution will be evaluated in light of the particular circumstances of the case.

- 15.3.5 Procedures for dealing with warrants vary according to the jurisdiction out of which the execution process is issued. Officers would need to be aware of the relevant court rules when seeking to issue warrants.

## 15.4 TERMS USED

- 15.4.1 'Writ/warrant of execution, writ of fieri facias, writ of land, warrant of sale, writ/warrant of seizure and sale' basically, all refer to the same thing and have the same effect. They allow a court official known as a sheriff or bailiff (depending on the court) to attend the address given on the writ and attach or levy (that is, secure) any assets found there belonging to the debtor to be sold at auction. If the debtor does not pay within a

specified time, the sheriff/bailiff returns, collects the goods and puts them to auction. Certain goods cannot be auctioned and these vary from State to State.