

ATO Director Penalty Notices

24 October 2016

If a client is a Director or about to become a Director of a company, the client should check to see if there are any outstanding Pay As You Go ("PAYG") or Superannuation Guarantee Charge ("SGC") liabilities due to the Australian Taxation Office ("ATO"). The reason being under recent changes to the ATO's Director penalty regime, Directors may be **PERSONALLY** liable for the following:

- unpaid PAYG withholding amounts
- unpaid SGC obligations applicable from and including 30 June 2012 (ie the June 2012 or later quarters).

Under the ATO's Director penalty regime the commissioner may issue a Director Penalty Notices (DPN), there are two types of DPN:

- A non-lockdown DPN
- A lockdown DPN

In the case of both non-lockdown and lockdown DPNs the director has 21 days from the issuing of the DPN to take action to avoid personal liability. The 21 day time period commences from when the ATO posts the DPN to the director. The ATO will post the DPN to the address listed in the ASIC records for the company.

Accordingly, it is very important to ensure that the records maintained by ASIC are accurate and to seek advice immediately if served with a DPN.

NON-LOCKDOWN DPN

Non-lockdown DPNs apply for unpaid amounts of PAYG and SGC that were **reported within three months of the due date of the BAS**. A Director has 21 days after the issuing (that is, the posting) of a Director penalty notice to avoid personal liability. Personal liability is avoided if one of the following happens:

- payment of the debt
- appointment of an administrator under section 436A, 436B or 436C of the Corporations Act 2001
- having a liquidator appointed to wind up the company

If one of the above actions is taken before the 22nd day after the DPN is issued to a Director the Director will not become personally liable under the DPN.

LOCKDOWN DPN

Lockdown DPNs apply for unpaid amounts of PAYG and SGC that were, **not reported within three months of the due date of the BAS**, the only option available to have the associated penalty remitted is payment of the debt. The penalty cannot be remitted by placing the company into voluntary administration or liquidation. Therefore, the Director is personally liable for the amount specified in the DPN. But remember the ATO must issue a DPN to the Directors registered address.

NEW DIRECTORS

As a new Director, if, **after three months from your appointment**, there are unpaid and unreported liabilities due before your appointment, the only option available to have the penalty remitted is to pay the debt. The penalty cannot be remitted by placing the company into voluntary administration or liquidation.

AN EXAMPLE TO DO LIST FOR DIRECTORS

- Ensure BAS's are lodged on time or at least within 3 months of the due date.
- Make sure your company pays the super guarantee to its employees' chosen fund by the cut-off date (the 28th day of the month following the end of the quarter).
- Ensure your address details are up to date with ATO and the Australian Securities and Investment Commission (ASIC).
- Contact DCL Advisory immediately if a client receives a Director Penalty Notice (DPN).
- Even if debts cannot be paid all returns should still be lodged within 3 months of the due lodgement date.

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