Avoiding Personal Liability for Company Tax Debts

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Six Good Reasons To Stay up To Date With Company Tax Lodgements

When cash flow gets tight, corporate compliance is often the first casualty. Some directors also think that, if a tax debt can't be paid, it's best not to lodge and Tax Returns. Here are seven reasons why it's best to keep tax lodgements up to date and accurate, even if they can't be paid.

1. The traditional (and still valid) 21 Day Director Penalty Notice (DPN)

Where a company has a GST, Pay As You Go Withholding or Superannuation Guarantee Debt, then the ATO can issue a DPN giving the director21 days notice of the impending personal liability, giving some options that will result in the penalty being "remitted" (effectively cancelled). If a director does nothing, they will become personally liable for those parts of the company's tax debt.

2. The newer "Lockdown" DPN

Less well known are the Lockdown DPNs that apply where a company has not lodged its BAS return (for PAYG and GST) or Superannuation Guarantee Charge (SGC) statement (for super) within 3 months of its due reporting date. A Lockdown DPN informs the director that they are instantly personally liable for the amount on the DPN – there is no avoiding personal liability.

3. Single Touch Payroll

Since July 2019 all employers have been required to use the Single Touch Payroll System that automatically sends payroll information to the ATO. This means the ATO knows which businesses are not complying with their requirements right away.

4. The "amendment" trap

Sometimes a company that is struggling to pay its BAS debt will lodge a nil, or low BAS, in an effort to avoid automatic liability under a Lockdown DPN. Bad idea! If the BAS is amended outside the 3 month reporting period, the ATO may then issue a Lockdown DPN claiming the reporting date is taken to be the date of amendment, not the initial date of submission.

5. Superannuation – improved systems means more audits

Rumour had it a couple of years ago the ATO had no way of detecting unpaid Super – unless someone complained. How with Single Touch Payroll and a closer relationship with the Superannuation funds, they have a greater capacity to monitor and pursue non compliance.

6. DPNs now can be sent for unpaid GST

Since April 2020, the ATO have had the power to issue DPNs for unpaid GST. They can only include GST incurred from 1 April 2020 onwards in the DPN. This power kicked in right at the start of COVID, so we haven't seen it used much. Once the ATO is back pursuing debts full speed, this is an area to watch out for.

Putting all that together – what's our current advice?

- Directors should stay right up to date with BAS, IAS and SGC lodgements – even if the debt can't be paid, lodge anyway!
- If a Director receives a 21 day DPN, they should act with plenty of time before the 21 days are up.
- If a Company has an existing PAYG, GST or SGC debt that is unpaid and remains unreported three months after the due date then you should call us immediately.

If you, or someone you love, finds themselves on the wrong side of one of the six points above, please call your accountant, check our website or give us a call and we will talk you through your options.

Dissolve Pty Limited
ATF Dissolve Unit Trust
Level 8, 80 Clarence Street
Sydney NSW 2000
ABN 14 174 223 792

Phone : 1300 724 957
Email : advice@dissolve.com.au
Web: www.dissolve.com.au