

When a company has a tax debt then it is just that – a debt due by the company and not the director's personal debt. But if some of that debt is for staff PAYG deductions, Superannuation or GST then the ATO can make those amounts the director's personal debt.

The ATO makes a director liable by simply sending a Notice by mail – no Court action or Lawyers are required!

The 21-day Director Penalty Notice

If a company has outstanding Pay As You Go (PAYG), Superannuation Guarantee Charge (SGC) or recent GST (since 1 April 2020) debts then the Australian Tax Office (ATO) could send a Director Penalty Notice (DPN) to a director giving that director 21 days to:

- cause the company to pay the debt; or
- put the company into liquidation; or
- put the company into voluntary administration; or
- come to a payment arrangement with the ATO.

If a director does none of the above within 21 days, then they are personally liable, by way of an equivalent "penalty", for that company debt. If they do one of the first three options then the penalty is "remitted", or cancelled. So be careful of the fourth option as it does not relieve a director of personal liability.

The 21 days are counted starting from the date written on the DPN. This is a strict deadline so be careful, as you'd be surprised how many people call us who have mis-counted! 21 days is plenty of time to get a voluntary liquidation underway. We only need the signatures of all directors and shareholders on our paperwork and for you to pay our fee. We can get the forms out to you on the same day you first call us, but we don't recommend leaving it to the last day.

If you think there might be a DPN coming soon, make sure your address is up to date with both ASIC and the ATO, because not receiving the letter is no defence.

The "Lockdown" Director Penalty Notice

If PAYG, GST or SGC amounts remain unpaid and unreported three months after the due date for lodging a return, a director cannot cause their director penalties to be remitted (i.e. cancelled) by placing their company into voluntary administration or liquidation. The ATO can send a Lockdown DPN, after the company has entered Liquidation of Administration.

A Combination of Both

More often than not we see combined DPNs these days. They let you know which debts are remittable, and which are locked down.

Our Advice To All Company Directors

Superannuation Guarantee

Under Superannuation Guarantee law if an employer is not able to meet their superannuation obligations by the due date for payment they are required to lodge a "Superannuation guarantee charge statement - quarterly (NAT9599)" with the ATO. It is imperative that a company lodge a NAT9599 with the ATO within 3 months of the due payment date or its directors will be automatically personally liable for the company's Superannuation Guarantee Charge (SGC) liability. It should be noted that SGC is made up of the shortfall in Super payments plus interest (10% pa) and a processing fee (currently \$20 per employee, per period). So unlike PAYG where a director is made liable for the shortfall only, for Super the director is liable for the shortfall plus interest and fees!

BAS

Get your company tax returns up to date and lodge them. If the company can't pay the debt due under a BAS for GST, PAYG or a Super debt, lodge the return anyway, otherwise you may be personally liable for the debt.

In the past, directors tended to just not lodge returns and they only risked personal liability if the ATO sent a Director Penalty Notice. It was hard for the ATO to pursue a debt they didn't know about. That's now a very bad approach.

What should I do to avoid penalties?

So what should a director do if their company has a past due PAYG debt or is in financial difficulty? Each situation will be different and advice is complicated by the fact that the old and new laws both apply. We suggest that you:

- Speak to your external accountant and establish what returns have been lodged and when they were lodged; and
- Call us at Dissolve so we can advise you of the best way forward.

More Information at our Sister Site

Visit our sister site Director Penalty Notice Solutions www.dpn solutions.com.au for more information on DPNs.