

DIRECTOR PENALTY NOTICES - TAX OFFICE'S WEAPON OF CHOICE

As Australia continues to emerge from the global financial crisis, the Tax Office is becoming more proactive in chasing up debts. With the recent change to legislation, we expect more Director Penalty Notices ("DPN") to be issued by the Tax Office. It is extremely important that prompt action is taken upon receiving a DPN as a DPN will make a director personally liable for the debts of the company unless prompt action is taken.

The change to the legislation in July removes the option for directors to enter into a repayment arrangement with the Tax Office (which was an option most taxpayers worked to achieve). With the removal of this option, the taxpayer must do any of the following within 21 days of the date of the DPN to avoid becoming personally liable for the tax debt of the company:

- Pay the debt;
- Wind the company up; or
- Appoint an administrator.

It will also be important to ensure directors update their postal address, as the legislation change provides that the DPN takes effect when posted by the Tax Office, rather than when received by the director, which will not allow any arguments about failing to receive the notice.

Another very concerning prospect is the Federal Government's position to extend the effect of DPN's to cover other taxation obligations, including general income tax and GST amounts. We will continue to monitor this situation and provide further alerts if amendments are passed.

We recommend that directors update their records with ASIC and the Tax Office and seek urgent legal and accountancy advice upon receiving a DPN.

This is an extract from a newsletter prepared by McKays Law Centre.

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