

SPECIAL BULLETIN

The Director Penalty Notice Regime - GST is now a personal liability

February 2020



The Federal Government's package of reforms aimed at addressing illegal phoenix activity is now law. One of the more significant measures under the reforms is the extension of the **Director Penalty Notice (DPN)** regime to include GST, luxury car tax and wine equalisation tax.

The new DPN regime will commence from **1 April 2020**.

This means that directors can now be personally liable to the ATO when a company fails to remit PAYG, Superannuation, GST, luxury car tax and wine equalisation tax.

A Director Penalty Notice (DPN) allows the ATO to pursue directors personally for unpaid and reported/unreported Superannuation Guarantee Charges (SGC) and Pay as You Go (PAYG) liabilities.

It allows the ATO to pierce the corporate veil, meaning directors are no longer protected by a company's corporate structure.

When is it likely that ATO would issue a Director Penalty Notice?

- Historical non-reporting;
- Significant ATO debt which remains unpaid;
- Suspicion of phoenix activity.

It is important that directors pay close attention to their company's reporting and payment obligations to ensure they don't get caught out. In some cases, where companies are of a larger size, directors may not have direct oversight regarding the company's tax compliance obligations. It is crucial to emphasise the potential consequences of non-compliance to all key personnel of your business and make them aware of this regime.

New directors need to be wary

If you have recently been appointed as a director of a company you can be held personally liable for historical SGC, PAYG and GST liabilities if they remain unpaid and unreported within 3 months or more after the date of your appointment. New directors should take the necessary steps to ensure their companies' SGC, PAYG and GST obligations are in order before their appointment.

It is critical that all directors (new and existing) update their personal details with the Australian Securities and Investment Commission (ASIC) to ensure they receive DPN as soon as possible. Directors only have 21 days from the date a Director Penalty Notice is issued to act and avoid personal liability.

It is important that directors start taking steps to ensure that their tax, superannuation and GST obligations of their companies are in order. Don't get caught out!

Should you have any concerns with the above please contact us:

George Pantahos E george@pantahos.com.au

Moses Bcharrani E mosesb@pantahos.com.au

T (08) 8223 7649 | | 248 Angas Street Adelaide

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