

ATO Clamps Down on Business Tax Debt

The ATO is becoming more aggressive in chasing outstanding tax debts owed by companies. Changes to the Directors Penalty Notice (DPN) provisions last year have made these a more powerful tool in the hands of the tax man, and reduced a director's options if a Notice is received.

As we are sure you are aware, companies are liable for corporation tax on their profits, and also liable to make PAYG payment of the amounts deducted from employees wages. If the company does not make these payments, the ATO can issue a DPN addressed to the directors of the company. This is a Notice requiring the directors to take certain steps within a very limited period of time, to avoid becoming personally liable for the amount due to the ATO.

Under the old system, a director had 14 days from the date of receipt of a DPN (a date that was often disputed with the ATO) to do one of four things, namely:

1. Pay the debt, either personally or through the company;
2. Enter into a payment plan with the ATO;
3. Appoint an administrator to the company;
4. Take steps to wind up the company.

From the middle of 2010 the rules changed. A director no longer has an option to enter in to a payment plan with the ATO. While, in theory, it is open for the company to do this, it is likely that the failure of the company to keep to a previous payment arrangement is what led to the issue of the DPN in the first place.

The time limit has also changed. The director now has 21 days from the date of posting of the DPN to take action. We understand that, rather than place the letters containing DPNs with the ATO's general mail, they are physically taken to the nearest post box by an ATO employee, who records the time, date, and place of posting.

If the directors simply ignore the DPN, then they become personally liable for the debt to the ATO.

At present, the DPN provisions only apply to corporation tax and PAYG instalments. They do not apply to GST payments nor to Superannuation Guarantee payments.

If you receive a DPN, you must act quickly. There is no provision to extend the 21 days time limit. If you ignore the Notice, and the ATO issues proceedings, there are various "deeming" provisions in the taxation legislation that say that a statement by an authorised officer of the ATO as to how much is outstanding is conclusive of the amount owing. In other words, if the ATO say you owe them

money, then you owe it! The only defences to such a claim are technical ones such as procedures not being followed properly.

If you are unlucky enough to receive a DPN, please call us on 3849 6263 or email reception@oneillslawyers.com.au to see how we can help.