

TAX OFFICE SOLUTIONS- **ATO cracks down on unpaid superannuation**

Director Personal Liability Alert – Unpaid and Unreported Superannuation Debt means danger for Company Directors

The ATO's power to pursue unpaid superannuation has undergone some significant changes in June 2012. The ATO now has new powers to:

- Expand the Director Penalty Notice regime from just PAYG deductions to include Superannuation Guarantee amounts (SG);
- Make directors automatically personally liable if PAYG or SG amounts remain unpaid and unreported three months after the due date for lodging a return and a director cannot cause their director penalties to be remitted by placing their Company into administration or liquidation – the new term used is a “Lockdown DPN”.

The ATO has been focusing on education rather than enforcement but that period of leniency has come to an end. In October the ATO started sending out warning letters to directors of companies with superannuation guarantee debts.

If a company cannot meet its superannuation obligations, the ATO requires the company to submit a Superannuation Guarantee Charge Statement. If the company is more than three months late in submitting this statement to the ATO, the directors can be held personally liable for the unpaid amount.

What to do if a Super Warning Letter or DPN is received:

- If the company can pay the debts then it should do so in order to avoid personal liability for the director;
- If a DPN is received with a 21 day notice period (old law) then react and do so within 21 days;
- Directors should get their company tax returns, including a Superannuation Guarantee Charge Statement, up to date and lodged. If a company can't pay the PAYG or Super liability, it should lodge the returns anyway to limit penalties or a director risks incurring a Lockdown DPN and therefore automatic personal liability;
- If PAYG debts and returns are already 3 months late either pay the debt or get the company into liquidation. If reporting is out of date, liquidation won't guarantee the director won't hear from the tax office again, but it is their best chance to move the company, and the director personally, to the bottom of the Enforcement Action pile.

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