

Changes to Director Penalty Notices - 3 month 'grace period' for SGC removed



The recent legislation dealing with Single Touch Payroll also brought with it some further ammunition for the already powerful ATO weapon, the Director Penalty Notice ('DPN'). Following Royal Assent of the *Treasury Laws Amendment (2018 Measures No. 4) Bill 2018*, the legislative change became effective on 1 April 2019.

Unfortunately it's no April Fools' Day joke that the three month window to avoid personal liability for SGC debts **has now been removed**. Previously, a company had three months to clear its SGC debt without the risk of a 'lockdown' DPN and automatic personal liability for its director(s).

However, the Bill changed the DPN rules by **creating an automatic personal liability for a director if the SGC liabilities are not remitted by their due date**, generally within 28 days of the end of each quarter. If unpaid, the Commissioner of Taxation can issue a lockdown DPN which essentially notifies the director of their personal liability for the company's debt, if the company cannot clear the debt.ⁱ

Obviously, the introduction of STP will see the reporting of superannuation obligations in real time, providing the ATO with up to date figures which could be used to issue a DPN.

There has been no change to the rule around PAYG debts - the three month rule from reporting due date still applies to avoid personal liability.

There are continued pushes for the DPN to be available to the Commissioner to pursue GST liabilities, most recently by the Senate Standing Committee on Economics. The Committee's recommendation was that draft legislation to combat illegal phoenix activity include extending the DPN regime to GST liabilities, Luxury Car Tax and Wine Equalisation Tax.

Now more than ever is the time for directors and advisers to ensure that a company can meet its ongoing taxation and superannuation liabilities in considering the viability of any business.

ⁱ The traditional 'non-lockdown' DPN provides directors with 21 days to appoint an administrator or liquidator to avoid personal liability, or to ensure the company pays the liability in the meantime.