

October 2010

ATO'S TOUGHER STANCE SEEK EARLIER INDEPENDENT ADVICE

- ATO is taking a tougher approach to collection of business tax debts
- Pressure on directors to ensure outstanding tax liabilities paid
- Insolvencies likely to increase as a result

OVERVIEW

The Australian Taxation Office (ATO) is taking a tougher approach to the collection of outstanding tax debts from Australian businesses.

In the aftermath of the GFC, and until recently, anecdotal evidence suggests late taxpayers were afforded time and increased leeway to negotiate repayment arrangements.

However, small businesses, which owe up to 60 per cent of the total \$12.2billion* in outstanding taxes, now appear to no longer have the benefit of tax payment 'holidays' and flexible agreements.

In addition, with the economy showing signs of improvement and the ATO escalating its debt collection activities, there has been a sharp rise in the number of Director Penalty Notices (Notices) issued.

The number of Notices issued for the year to June 2010 (6,389) is slightly down on the year to June 2009 (6,966). However, based on our observations, we believe there has been a proportional increase in the number of Notices issued since 1 July 2010.

LAW REFORM – DIRECTOR PENALTY NOTICES

The ATO can issue Notices to directors in respect of PAYG arrears. The aim of Notices is to prompt directors to assess the financial position of their business, or risk becoming personally liable for their business' tax arrears.

To avoid personal liability, a director receiving a Notice has the following options:

- pay the tax debt;
- appoint a voluntary administrator to the company;
- appoint a liquidator to wind up the company.

* Source: ATO

Previously, directors had a fourth option to avoid personal liability – to have their business enter into a repayment plan with the ATO.

Until recently, directors had 14 days from the receipt of the Notice to enact one of the options.

However, from 1 July 2010 the following legislative changes were made:

- the time to comply with a Notice is now 21 days from the date of issue, not the date received;
- the Court has no power to grant relief to directors from their obligations when a Notice is issued;
- while a director can still arrange for their business to enter into a repayment agreement, entering such an agreement after a Notice has been issued will no longer constitute compliance with the Notice. This means, a director will remain personally liable for the tax debt until it is paid.

TAYLOR WOODINGS' VIEW

Businesses with outstanding tax debts and cash flow difficulties should seek independent advice as soon as possible. A failure to take prompt decisive action will diminish the prospects of the business continuing and also increases the likelihood of directors becoming personally liable for the company's debts.

Taylor Woodings specialises in the areas of corporate recovery and related advisory services. We provide advice to directors and/or businesses in financial distress to establish and drive optimum outcomes.

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