taylor woodings

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DIRECTORS BEWARE

PERSONAL LIABILITY UNDER PROPOSED LAWS

Government to extend director penalty notice regime to include unpaid superannuation

The Federal Government has announced it will extend the director penalty notice regime to include unpaid superannuation potentially making directors personally liable if their company does not pay employees superannuation entitlements.

The Government recently released the Inspector-General of Taxation's *Review into the ATO's administration of the Superannuation Guarantee Charge* ("**the Review**"). The aim of the Review was to identify and recommend changes to assist the ATO to collect outstanding superannuation, improve the early identification of unpaid superannuation contributions and ensure the timely handling of employee complaints.

The Review found that since 2000-2001 the ATO has been unable to recover unpaid superannuation of $600.8 million due to the insolvency of employers.

PROPOSED LAW REFORM

The Review made 12 recommendations in respect of the superannuation guarantee system. The key recommendations include:

- Expanding the director penalty regime to apply to unpaid superannuation Guarantee Charge ("**SGC**")C liabilities of the company;
- Discourage the non-lodgement of SGC statements by imposing penalties at a more meaningful level; and
- The ATO's debt collection process should place greater emphasis on the employers' previous compliance behaviour in determining how a debt case is actioned.

The Federal Assistant Treasurer and Minister for Financial Services and Superannuation, the Hon. Bill Shorten MP, has announced that the Government will adopt the Inspector-General's recommendation and will extend the director penalty notice regime to cover unpaid SGC. Further details, for example, proposed draft legislation is not yet available.

CURRENT REGIME

As reported in a previous ***Taylor Woodings newsletter,*** the ATO can issue director penalty notices ("**Notices**") to directors in respect of PAYG arrears due by the company. The aim of Notices is to prompt directors to assess the financial position of their business. To avoid personal liability, a director receiving a Notice has 21 days from the date the Notice is posted by the ATO to do one of the following options:

- Pay the tax debt;
- Appoint a voluntary administrator to the company; or
- Appoint a liquidator to wind up the company.

TAYLOR WOODINGS' VIEW

In our experience, a large number of businesses that are facing cash flow difficulties often do not pay superannuation to employees. We recommend that businesses in this position should seek independent advice as soon as possible. The Government has indicated that it will extend director penalty notices to cover SGC, therefore a failure to take immediate action for unpaid superannuation may, under the possible new laws, increase the likelihood of directors becoming personally liable for the business debts and reduce the prospects of the business continuing to trade.

Taylor Woodings is a specialist accounting firm in the areas of corporate recovery and related advisory services. We provide advice to directors and businesses when in financial distress to establish optimum outcomes.

For a confidential discussion about any matter raised in this newsletter please contact one of the Taylor Woodings' partners listed below.

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