

CLIENT UPDATE

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Director Penalty Notices - Amendments Introduced

As we have noted in previous client updates, a director of a company that has a tax debt to the ATO (often in relation to PAYG withholding amounts) may be served with a Director Penalty Notice and become personally liable for their company's tax debt.

The law surrounding Director Penalty Notices has undergone some very significant changes in recent times and a new regime is now in effect.

Not Negotiable

The ATO used to allow the company 14 days to remit the penalty before they commenced recovery proceedings. This has now increased to a 21 day period which is not negotiable and starts from the date the notice was posted, rather than the date it was received by the recipient. The court also has no power to grant relief to a director from their obligations in respect to a Director Penalty Notice.

Reduced options

Under the old regime a Director Penalty Notice allowed the recipient to comply with the notice in four different ways. Now, to avoid personal liability, the recipient of the Director Penalty Notice must take one of the following three options within 21 days of the notice being issued:

- Comply with the obligation to pay the relevant tax liability in full.
- Appoint a voluntary administrator.
- Appoint a liquidator and begin to wind up the company.

The option to enter into an installment repayment arrangement to comply with a Director Penalty Notice has been removed.

It is important for a director to be aware that if they receive a Director Penalty Notice and do not undertake one of the three options within the 21 days allocated, the director can become personally liable for the tax debt of the company.

What this essentially means is that the ATO can then commence action against the director rather than the company to collect the outstanding debt.

If a client has a tax debt or has received a Director Penalty Notice it is vital that they seek professional advice and quickly!

About us

Heard Phillips aims to be the first choice for critical SME insolvency, restructuring and forensic accounting matters in South Australia.

Our firm seeks to deliver superior quality outcomes for clients through our credible and reliable practitioners, who take pride in displaying the highest level of respect to all stakeholders.