



***We enclose a DPN / GST Update for all Companies Directors
for the exclusive use of clients of
The Mischel & Co Group of Companies.***

Dear Client,

Company Directors Liable for Outstanding GST

For many years now, the Australian Tax Office (ATO) has had the power to make directors personally liable for certain debts of the company by issuing Directors Penalty Notices. This has been a significant shift from the concept of limited liability of individuals associated with companies.

Director's Penalty Notices have, until recently, been restricted to debts relating to:

- Money withheld by companies from employee's wages to be paid to the ATO on account of the employee's income tax (PAYG obligations), and
- Money that companies with employees are required to pay into Superannuation funds on behalf of their employees, the Superannuation Guarantee Charge (SGC).

If a company failed to pay its GST obligation the only recourse the ATO could take was to start legal proceedings against the company itself or commence action to liquidate the company. Directors could not be held personally liable for a Company's GST debts.

As of 1st April 2020, company directors may now also be held liable for their company's outstanding GST, Luxury Car Tax and Wine Equalisation Tax payments in an Australian Tax Office (ATO) crackdown.

As the Government seeks to maintain its budget surplus, it is highly likely we will soon see an increasing amount of Director Penalty Notices (DPN) being issued by the Australian Taxation Office (ATO).

What this means is that the ATO can potentially recover outstanding payments from the director personally. As a result, individual directors now face the possibility of bankruptcy and the loss of their personal assets, including their homes in the event of their company failing to meet its obligations in these key areas.

Directors and their management teams should be reviewing their systems and procedures to reduce and limit their risk. The systems and procedures need to be calculating the debts correctly to ensure that the debts are known and paid on time (including lodgement of any relevant forms).

Early action will be essential to limit exposure to unpaid superannuation, withholding tax, GST, Luxury Car Tax and Wine Equalisation Tax.

Now is the time to correct any inadvertent errors or known outstanding debts. If these are not corrected promptly, directors will become personally liable. Directors should also be considering asset protection strategies to ensure their current and future assets (eg inheritances) are adequately protected if the ATO makes a claim against them personally.

Why are DPN so important?

A Director Penalty Notice (DPN) allows the Tax Office to pursue directors personally for unpaid and reported / unreported Superannuation Guarantee Charges (SGC), Pay as You Go (PAYG) liabilities, Goods and Service Tax (GST), Luxury Car Tax (LCT) and Wine Equalisation Tax (WET).

It allows the ATO to pierce the corporate veil, meaning directors are no longer protected by a company's corporate structure.

Why would the ATO issue a Director Penalty Notice?

- Historical non-reporting;
- Significant ATO debt which remains unpaid;
- Suspicion of phoenix activity.

It is important that directors pay close attention to their company's reporting and payment obligations to ensure they don't get caught out.

Two types of Director Penalty Notices

Non-Lockdown DPN

If a company lodges its BAS within three months of the due date and it doesn't pay its PAYG, GST, LCT etc the ATO can issue a Director Penalty Notice to the directors of the company.

The only way the directors cannot be held personally liable after receiving such a notice is to:

1. Have the company, or another party, pay the outstanding amount;
2. Appointing an administrator;
3. Placing the company into liquidation

An option needs to be implemented within 21 days from the date of the DPN to receive a remission of the director penalty.

Lockdown DPN

If a company doesn't lodge its BAS within three months of the due date and doesn't pay its GST, PAYG, LCT etc the directors are automatically personally liable for these unpaid debts if the company doesn't ultimately pay it. Payment of the outstanding debt needs to be made within 21 days from the date of the DPN to avoid the directors being held personally liable.

New directors

If you have recently been appointed as a director of a company you can be held personally liable for historical SGC, PAYG and GST liabilities if they remain unpaid and unreported 3 months or more after the date of your appointment. New directors should take the necessary steps to ensure their companies' SGC, PAYG and GST obligations are in order before your appointment.

Take home points

If you are a director of a company it is vital that you ensure all BAS's are lodged on-time before the due date – even if the company doesn't have the ability to pay the debt straight away.

It is also critical that all directors (new and existing) update their personal details with us so that we can ensure the records with the Australian Securities and Investment Commission (ASIC) are correct to enable you to receive a DPN as soon as possible if this was ever to arise. Directors only have 21 days from the date a Director Penalty Notice is issued to act and avoid personal liability.

If your company has an outstanding tax debt that it is unable to pay you should urgently contact Henry Mischel or Vick Fak on [03 9684 9999] or via email at [admin@mischco.com.au] to discuss the steps you should take as the company director to ensure no personal liability is assessed to you.



The information supplied in this memorandum has been sourced from numerous publications available to The Mischel & Co Group of Companies including the Australian Taxation Office website and other superannuation specialist.

The content of this information memorandum is general information only and hasn't taken your circumstances into account. It's important to consider your particular circumstance before deciding what is right for you as it does not reflect all the superannuation legislation and announcements but simply highlights those points which we believe are most likely to affects our clients.

The Mischel & Co Group Pty Ltd
Accountants and Business Advisors
Suite 102 First Floor 41 Cecil Street Southbank Vic 3006
Phone: 03 9684 9999 Fax: 03 9684 9988 Email: admin@mischco.com.au
Postal Address: P.O Box 1380 St Kilda South Vic 3182
Website: www.mischco.com.au