Pause | August 2020

Stay connected, get advice from trustworthy sources and ask for help.

Welcome to Pause | BCR Advisory and Bentleys NSW collaborative e-news which aims to equip you with the topical insights and knowledge required to support clients in financial distress. If there are any topics you would like covered in future editions, or with any other queries, please contact us.

GST liability - the sleeper for directors

With the disruption and distraction caused by COVID-19 pandemic, you would be excused for having missed some important changes to the ATO Director Penalty Notice ("DPN") regime.

After the passing by Parliament of the *Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019*, **company directors** may now be made **personally liable for unpaid GST.**

This law adds to the existing DPN regime, whereby directors can be made personally liable for unreported and unpaid PAYG and SGC company liabilities. The government has introduced GST to the DPN regime to deter and combat illegal phoenix activity.

The Australian Restructuring Insolvency and Turnaround Association (ARITA) has summarised the key aspects of the changes as follows:

*"The changes apply to tax periods from **1 April 2020**, but do not apply to amounts outstanding prior to this date.*

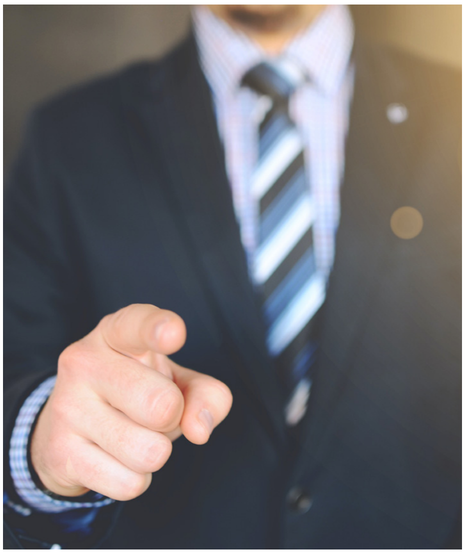
Directors are required to ensure that their company meets their GST obligations by the due date or goes promptly into voluntary administration or liquidation. If amounts remain outstanding on the due date and the company is not in liquidation or administration, a penalty arises equal to the outstanding amounts.

The ATO cannot collect the penalty without first serving a DPN giving the director 21 days' notice to pay the penalty or place the company into voluntary administration or liquidation. If the director does so the penalty will be remitted unless it is a lock-down DPN.

A "lock-down" DPN will apply in relation to GST if a GST return is not lodged or a voluntary administrator or liquidator is not appointed, within three months of the due date. In the same way as for PAYG and Superannuation, once a DPN is locked down, the appointment of a voluntary administrator or liquidator to the company will not remit the director's penalty.

These obligations continue to apply to directors who resign, in relation to all tax periods prior to their resignations, where there are amounts outstanding.

Obligations will be imposed on new directors 30 days after their appointment.



All of these amendments also apply to Wine Equalisation Tax (WET) and Luxury Car Tax (LCT)."

The corporate veil relied upon for so long by directors to protect them from personal liability has been significantly lifted.

With the ATO expected to restart its debt collection activities around September, including issue of DPN's that can now capture unpaid GST, this is not the time for company directors to be complacent.

The message is very clear. Now more than ever directors must maintain their tax reporting obligations with the ATO in an accurate and timely manner. Failure to keep lodgements up to date and/or manage cash flow to pay tax liabilities on time may result in personal liability for directors of a much wider scope than has previously been experienced.

If you or a client have an escalating tax debt or receive a DPN from the tax office, contact one of the professional staff at BCR Advisory who are available to discuss options.

Request a training session

To learn more about the signals, opportunities and challenges associated with difficult client circumstances, click here to request a free training session for your workplace.

No obligation discussion

We would be pleased to meet you, at no charge, to explore how BCR Advisory can support your business. To request a time, please contact us.

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Do you require assistance? Contact us.

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