



## ATO RAMPING UP ON DEBT RECOVERY ACTIVITIES

We are often asked by accountants and their clients alike about **the ATO's attitude towards following up outstanding debts.**

In our experience when we meet with accountants and their clients, the ATO is either red hot on their recovery activities for some clients or not even engaged at all with others, despite mounting debts and overdue lodgments.

We have had some recent experiences that suggest that the **ATO may be cracking down on unpaid debts.**

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### Director of a wound up company receives a writ for a Director Penalty Notice issued seven years ago

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We are often asked about how long it might take for the ATO to commence recovery of amounts owed by directors under a Director Penalty Notice ("DPN"). Our responses were always unclear as until only recently, we had never heard of one actually being followed up by the ATO.

That is until just recently when we were contacted by a director of a company that was placed into voluntary administration in 2009 and subsequently deregistered in 2013. We did not administer the appointment; however we understand that the company in question was in the transport industry and was fairly atypical in that it had kept up with its ATO lodgments, but had a mounting ATO debt in the face of a reduction in cash flow.

The director initially sought the voluntary appointment of an Administrator upon receipt of a DPN. By making the appointment within the 21 day 'action period', the director avoided a potential personal exposure to approximately \$22,000 in PAYG-withholding tax that had been reported on time but not paid (i.e. a 'general' DPN, not a 'lock-down' DPN).

With the company's affairs wound up in 2013, the director naturally thought his woes with the tax office had ended. **However**, unbeknownst to the director, he had been issued with

another DPN some months prior to him placing the company into voluntary administration which subsequently expired, leaving the director personally liable for approximately \$122,000 of unremitted PAYG-withholding tax. The unpaid PAYG-withholding tax dated back to 2008. Whether the DPN was lost in the mail or simply discarded by the director remains to be determined – the hard fact is, he is personally liable for the debt.

So in summary, in late 2016, the ATO has finally decided to take action on a DPN issued in 2009 for debts owed from 2008.

This experience highlights a number of matters that are pertinent to accountants:

1. The ATO will issue a DPN to the director's home address as per the ASIC records for the company.
2. Therefore you will not know about it until it might be too late. Our advice to accountants is:
  - Make sure the directors' address details are correct as per the ASIC search and update the details if they are outdated; and
  - You should instruct directors to open any correspondence received from the ATO so that they can give themselves the maximum amount of time to deal with a DPN, remembering that the 21 day 'action period' starts on the day the DPN is issued – not when the notice is received.
3. Ensure BAS and SGC statement lodgments are acquitted on time to avoid a director's personal exposure to a 'lock-down' DPN.

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### **Former Liquidator contacted about overdue \$6,000 GST debt from 2010**

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We recently received a phone call from the ATO pursuing an amount of unpaid GST associated with a finalised liquidation that commenced in 2010. We commonly hear that the ATO will not pursue debts below a certain threshold, somewhere around the \$50,000 mark; however this experience shows that the ATO may be lowering their sights as part of a more aggressive debt recovery campaign.

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### **Do you have a client that could use some insolvency guidance?**

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The above experiences indicate that the ATO may be gearing up for a firmer approach to the collection of overdue debts, meaning a likely higher incidence of garnishee notices, DPNs, Statutory Demands and winding up notices.

If you have a client that is experiencing financial difficulties and you feel you need some help on insolvency matters, please feel free to give us a call to bounce ideas off us.

We offer cost-free and obligation-free consultations for you and your client to discuss the options available to your client. This way everyone can make an informed decision about the most appropriate course of action. Often we identify options that mean a formal appointment may be avoided, which is our preferred outcome. Other situations dictate that an insolvency appointment cannot be avoided in which case we can become involved in a formal capacity. Regardless of the potential outcome, you should know that we have your client's best interests in mind in times of distress.

## **CONTACT US**

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