

Of Interest to All Business Owners – Brief Summary of Changes to Director Penalty Notice Regime

The following is a short summary of the changes that became effective this month. This will be very relevant and of concern to some clients.

Direct Penalty Notices

- The *Pay as You Go Withholding Non-Compliance Tax Act 2012* is now law;
- Directors can be held personally liable for unpaid superannuation guarantee as well as unpaid PAYG amounts;
- Directors are no longer able to discharge themselves from personal liability by placing the company into administration or liquidation;
- Directors will be liable for unpaid superannuation guarantee or PAYG if unpaid and unreported 3 months after the due date;
- Associates of the director such as spouses or family members employed in the business who could have been reasonably expected to know the financial circumstances of the company may also be personally liable to pay the unpaid tax to the ATO.

Implications

- Directors will now prefer the payment of superannuation guarantee and PAYG to the ATO ahead of payments to other creditors;
- Businesses with short term cash flow problems will need to manage or prioritise these ATO debts to avoid personal liability for directors;
- Associates of directors who have knowledge of the financial circumstances of the business will need to make enquiries and be aware of whether superannuation guarantee and PAYG payments are being kept up to date (query the influence they will have if payments are not being made);
- Associates of the director who do not have knowledge of the financial position of the business and its tax position appear to be safe from personal liability under this legislation.

To see how these changes apply to your business please contact David Atkins on 9525 8788.