



# DEALING WITH DIRECTOR PENALTY NOTICES

A Director Penalty Notice (**DPN**) is one of a number of enforcement options the ATO has in its arsenal to recover unpaid taxation liabilities (PAYG, GST and superannuation) of a company.

## CONSEQUENCES OF FAILING TO ADDRESS A DPN

A director will become personally liable for the debts detailed in the DPN if the director fails to address the notice within the relevant time period, which may result in:

- ▶ legal proceedings to recover the amount of the debt referred to in the DPN; or
- ▶ a garnishee notice issued against a director's personal bank accounts; or
- ▶ personal tax refunds or other credits set off against the debt.

Failing to address the DPN may well result in the director's bankruptcy.

## TIMEFRAME IN WHICH TO DEAL WITH A DPN

A director has 21 days from the date the DPN was placed into the post by the ATO or personally served to deal with the DPN. Importantly the 21 days is not based on the date on which the director receives or opens the DPN, which may result in significantly less than 21 days to deal with the DPN. Reacting quickly is important to maximise the options available to the director. The envelope in which the DPN is posted, should be retained by the director as evidence of the date on which the DPN was posted.

The ATO will send the DPN to the director's last known address as recorded on the ASIC register. Accordingly, ASIC must be notified of any changes of address as quickly as possible.

## TYPES OF DPN

A DPN may contain two elements which need to be dealt with differently.

### ▶ Lockdown DPN

A debt becomes a lockdown debt when the relevant ATO return is lodged outside of the following time frames:

- 3 months of the due date for the lodgement of a BAS/IAS return; or
- the due date for lodgement of the SGC Statement.

A director is personally liable for the lockdown amount and only avoids that liability when the debt is paid

### ▶ Non-Lockdown DPN

A director has the following options to avoid personal liability:

- Have the company pay the debt in full; or
- Appoint a Voluntary Administrator (**VA**) to the company; or
- Appoint a Small Business Restructuring Practitioner (**SBRP**) to the company; or
- Place the company into liquidation by means of a Creditors' Voluntary Liquidation.

An example of a DPN follows:

**Taxation Administration ACT 1953**

**Notice of director's liability to pay a penalty to the Commissioner of Taxation**

**PAYG withholding amounts**

In exercise of the powers and functions conferred on me as a Deputy Commissioner of Taxation by a delegation from the Commissioner of Taxation (**the Commissioner**) under the provisions of the *Taxation Administration Act 1953 (TAA)*, I give you notice under section 269-25 of Schedule 1 to the TAA that you, as a director of **(the company)**, failed to discharge an obligation you have pursuant to section 269-15 of Schedule 1 to the TAA and are therefore liable to pay the Commissioner by way of penalty an amount equal to the unpaid amount of each liability of the company pursuant to subsection 16-70(1) in Schedule 1 to the TAA in respect of amounts withheld by the company for the purposes of Division 12 in Schedule 1 to the TAA, details of which are set out in the following table:

Column 1	Column 2	Column 3	Column 4	Column 5
Particular withholding period	Amount withheld	Amount the Commissioner thinks is the unpaid amount of the company's liability	Unpaid amount of the company's liability notified on or before the end of 3 months after the due day	Unpaid amount of the company's liability not notified on or before the end of 3 months after the due day
	\$	\$	\$	\$
			<div>Non-lockdown Amount</div>	<div>Lockdown Amount</div>

**DEFENCES TO A DPN**

A director may defend a DPN on the basis that:

- ▶ they took no part in the management of the company due to illness or some other valid reason; or
- ▶ they took all reasonable steps to cause the company to:
  - pay debts summarised in the DPN; or
  - appoint a VA; or
  - appoint a SBRP; or
  - appoint a liquidator.

**TIME IS OF THE ESSENCE**

Immediate action is required upon receipt of any type of DPN to mitigate a director’s personal liability. In circumstances where the business is viable and a non-lockdown DPN is issued, the restructuring of the business via a VA or SBR can commence within 21 days thereby avoiding personal liability.

SV Partners are experienced in the options available to directors who receive a DPN. Please contact us for a free, no-obligation meeting to discuss those options.

**CONTACT US TODAY**

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