**Greengate Advisory**

**Independent. Concise. Efficient.**

Company directors and their advisors need to be aware that non-lodgement of Business Activities Statements (“BAS”) and Superannuation Guarantee Charge (“SCG”) Statements with the ATO may be personally liability for these debts.

**Director Penalty Notices (“DPN”)**

The ATO uses DPNs and Garnishee Notices to recovery tax debts and to impose positive obligations on Directors to deal with outstanding PAYG Withholding and the Superannuation Guarantee Charge debts (“Tax Debts”).

The DPN regime makes directors of companies who fail to pay Tax Debts **personally liable**. The key facts of DPN regime are outlined below:

| Facts | Key facts of a Directors Penalty Notice |
| --- | --- |
| 1. Director personal liabilities | Directors become personally liable for Tax Debts 21 days are the DPN Notice is issued |
| 1. Automatic liability for unreported and unpaid Tax Debts | Where a company’s Tax Debts were both unreported and unpaid 3 months after the due date, the directors are automatically personally liable for the Tax Debts. |
| 1. Avoiding personal liability for directors once they receive a DPN | Within 21 days of issuing the DPN (which may be received a week or more after issue), a director can avoid personal liability by either:   * Paying the Tax Debt * Appointing an Administrator to the company * Appointing a Liquidator to the company. |
| 1. Effect on new directors | New directors are liable if outstanding Tax Debts are unpaid 30 days after their appointment as director |
| 1. Time frames | ATO can only enforce a DPN after 21 days of giving notice to the director and notice can be given to the company tax agent |

Tips for directors to limit or avoid personal liability:

1. **Always lodge BAS and SGC Statements within 3 months of the due date,** even if the liability cannot be paid!
2. **Act immediately** upon receipt of a DPN and **consider a payment arrangement with the ATO**. This should be considered with care as payments made can be considered as preference payments to the ATO, if a liquidator is appointed. The ATO can make the directors personally liable for the ATO preference claim
3. **Seek professional advice from an insolvency practitioner** about the options available and possibly save the company through a financial restructure.

**Summary of the DPN**

If Directors act within 21 days and:

1. Wind up Company voluntarily; or
2. Appoint Voluntary Administrator; or
3. Pay debt in full

Director not personally liable yet.   
(Have options) **[RIGHTS PRESERVED]**

**NO**

Business Activity Statement and Superannuation Guarantee Charge lodged within   
3 months from due date

Issued Director’s Penalty Notice By ATO

**YES**

**YES**

Director Automatically **personally liable**

**NO**

Director **not** personally liable but the company is still insolvent.

**How Greengate Advisory can help?**

Greengate Advisory is a firm that specialises in insolvency and restructuring, we are here to assist your clients who experiencing financial difficulties with straight forward solutions in simple to understand terms. The initial consultation is free, strictly confidential and without obligation. Please call (02) 8318 3699 to speak to one of our solvency specialist or email [info@ggadvisory.com.au](mailto:info@ggadvisory.com.au).