

Fact Sheet - Director Penalty Notices

Problem

Company directors have the potential to become personally liable for unremitted PAYG deductions if the ATO issue a Directors Penalty Notice to the director(s) of the company

How Personal Liability Occurs

The Commissioner of Taxations issues a 'Directors Penalty Notice' to the directors and this causes personal liability if no action is taken within 14 days of the date of the Commissioners letter.

A 'Directors Penalty Notice' must be acted on immediately.

The Extent of Personal Liability

The 'Directors Penalty Notice' will specify the amount that the director(s) can become personally liable for.

How To Avoid Personal Liability For the unpaid PAYG Tax

The 'Directors Penalty Notice' provides four options to avoid personal liability for the company's unpaid PAYG Tax.

Remission of the penalty will occur if the director(s) instigate one of four options which are detailed within the 'Penalty Notice' within 14 days. These four options are:

- The company's liability has been paid.
- An agreement under Section 222ALA of the ITAA to pay the liability has been put in place.
- The company is being wound up.
- The company is under Administration within the meaning of the Corporations Act, 2001.

The director(s) should seek advice on each available option to ensure that they avoid personal liability.

Beware Loan Repayments May Not avoid Personal Liability

Section 222ALA provides that a written repayment agreement may provide that in the event of the director defaulting he/she will be liable for the balance owing of the Director Penalty Notice.

A Repayment Agreement that provides for the director to be liable if he/she defaults, should not be entered into unless the director is certain that the Repayment Agreement can be completed

Beware Personal Liability Can Occur Without the director(s) actually Receiving a 'Directors Penalty Notice'

The Commissioner of Taxation will send the 'Directors Penalty Notice' to the address shown for the director(s) recorded with the AISC. If the director(s) have moved and their mail is not being forwarded, there is the potential for the 14 day period of the Director Penalty Notice to expire and the director(s) to become personally liable without actually receiving the Directors Penalty Notice. It is critical that directors record their current residential address with the ASIC

What Company Directors should do when they receive a Directors Penalty Notice

Upon receiving a Directors Penalty Notice, the director(s) should immediately take the Notice to his/her Taxation Accountant and Solicitor for the purpose of determining whether the outstanding PAYG Taxation liability can be paid and personal liability avoided. If this is not possible, consideration should be given to calling Alan Nicholls and placing the company into Administration within 14 days of the date of the Directors Penalty Notice, to avoid personal liability for the director(s).

What a Directors Penalty Notice Looks Like

[Click Here to view a sample copy of a 'Directors Penalty Notice' Legislation](#)

[Click Here for a copy of section 222AOBAA and 222AOE which are relied upon by the Commissioner of Taxation for directors to become personally liable for the company's PAYG liability.](#)

Further Action

Should you have any questions regarding Directors Penalty Notices, call Nicholls & Co and we will be pleased to answer your enquiry. For urgent matters Alan Nicholls can be contacted on 0413 654 767