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Company directors, and their advisors, need to be aware that non-lodgment of Business Activities Statements ('BAS') and Superannuation Guarantee Charge ('SGC') Statements with the ATO could lead to the directors becoming personally liable for these debts. The ATO has recently focused its efforts to recover unpaid SGC.

DIRECTOR PENALTY NOTICES ('DPN')

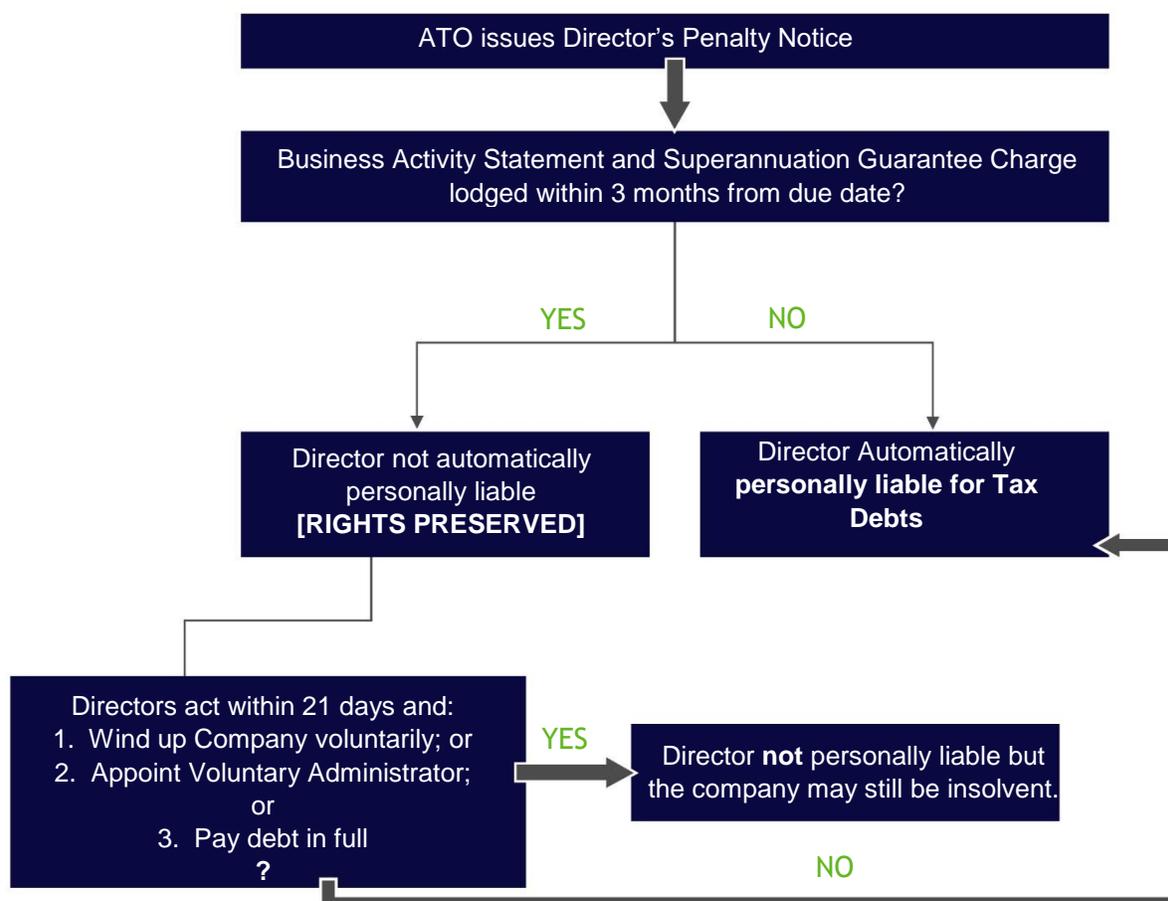
The ATO uses DPNs and Garnishee Notices to recover tax debts and to impose positive obligations on directors to deal with outstanding PAYG Withholding and the Superannuation Guarantee Charge debts ('Tax Debts') and to combat "illegal phoenix activities." The ATO is now data matching and collaborating with multiple government agencies to identify potential offenders and facilitators of illegal phoenix activities. The DPN is one of the many tools used by the ATO to combat illegal phoenix activities and makes directors of companies who fail to pay Tax Debts personally liable. The key facts of the DPN regime are

FACTS		KEY FACTS OF A DIRECTORS PENALTY
1	Director personal liabilities	Directors may become personally liable for Tax Debts (including any estimates) 21 days after the DPN is issued
2	Automatic liability for unreported and unpaid Tax Debts ('Lockdown')	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.
3	Avoiding personal liability for Directors once they receive a DPN in the event that the Lockdown Provisions does not apply.	Within 21 days of issuing the DPN, which may be received a week or more after it being issued, a director can avoid personal liability by either: 1. Paying the Tax Debts 2. Appointing an Administrator to the company 3. Appointing a Liquidator to the company
4	Effect on new directors	New directors are liable if outstanding Tax Debts are unpaid 30 days after their appointment as director
5	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:

- ✔ Always lodge BAS and SGC Statements within 3 months of the due date, even if the liability cannot be paid!
- ✔ Act immediately upon receipt of a DPN and consider a payment arrangement with the ATO. This should be considered with caution and prepared against the company's existing cashflow projections. The 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.
- ✔ Seek professional advice from an insolvency practitioner about the options available and possibly save the company through a financial restructure. Always ensure that your registered office and tax agent details are up to date.

SUMMARY OF THE DPN



HOW GREENGATE ADVISORY CAN HELP?

Greengate Advisory is a firm that specialises in insolvency and restructuring. We are here to assist your clients who are experiencing financial difficulties with straight forward solutions in simple to understand terms. The initial consultation is free, strictly confidential and without obligation.