

Are you liable for the Company's tax debts?

Directors are not normally liable for the debts of a Company. However in certain circumstances the Directors can be liable for the tax debts as follows:

- Unreported - When the Company is late in its ATO lodgements
- Reported - When the Company fails to pay its tax debts

Unreported - When the Company is late in its ATO lodgements

If within three months of the due date, the following lodgements have not been submitted to the ATO:

- The outstanding Superannuation Guarantee Charge plus the ATO charge; or
- PAYG withholding liability;

then the director is personally liable for a penalty equal to the unpaid amount. There is no requirement for the ATO to issue a Director's Penalty Notice to make the Director personally liable. Placing the Company into administration or liquidation will not avoid this liability. Lodge the returns within 3 months of the due date and the Director avoids personal liability.

Reported - When the Company fails to pay

Where the lodgements have been submitted within the 3 months time frame, in order for a Director to be personally liable the ATO must issue a Director's Penalty Notice, which will impose a personal liability on the Director, unless with 21 days of the Notice:

- The debt is paid
- An administrator or liquidator is appointed.

The ATO will send the Notice to the address of the Director as recorded on the Company search at ASIC. It is therefore important to ensure that the ASIC records for the Company and its Directors are up to date.

New Directors

Newly appointed Directors will be liable from 30 days after their appointment for the whole amount outstanding, not just the amounts incurred from the date of their appointment.

Gideon Rathner is the Partner in charge of the Corporate Reconstruction & Insolvency practice. He has over 30 years experience in insolvencies, identifying the business drivers and reviewing businesses in financial distress. He leads a young, dynamic and energetic team that is solution focussed. Should you have any questions concerning either your business or your risks as a Director, please contact us at Lowe Lippmann.

