

The NEW Directors Penalty Regime

There is a new directors' penalty regime before parliament. Once passed, it will extend the current director penalty regime.

What do the changes mean?

Company directors will be personally liable for their company's failure to meet its unpaid superannuation guarantee obligations in addition to unpaid PAYG Withholding obligations for employees in certain circumstances.

What circumstances?

A company's superannuation guarantee charge is treated as payable on the day the employer is required to lodge the superannuation guarantee charge statement for the quarter to the Commissioner.

By way of example:

- Superannuation reporting for the quarter ending 30 June 2012;
- Payment is due by the 28 July 2012;
- If this payment IS NOT PAID then a superannuation guarantee charge statement needs to be lodged by 28 August 2012;
- If company fails to lodge the superannuation guarantee charge statement by the 28 August 2012, the directors become liable for the unpaid value of the superannuation guarantee charge.
- The ATO can commence formal action to recover the debt 21 days after the lodgement date being 18 Sept 2012.

Conclusion

Company directors will not be able to discharge their director's penalties by placing their company into administration or liquidation when either unpaid:

1. PAYG Withholding, or
2. superannuation guarantee debts

remain unreported for more than three months after the due date.

So it will be often best to report and then negotiate a payment plan where circumstances dictate a late payment will be necessary.

If you have any queries, please do not hesitate to contact our office.