

Director Penalty Notice Overview

What is it a director penalty notice?

A Director's Penalty Notice ("DPN") is issued by the Australian Taxation Office under Section 222AOE of the *Income Tax Assessment Act 1936* which makes directors personally liable for two types of tax debts, Pay as You Go ("PAYG") withholding and Superannuation Guarantee Charge ("SGC").

Avoiding personal liability

For directors to avoid personal liability in the circumstances where the tax lodgments are in order, they must act within the 21 days by electing one of the options by either:

- Paying the debt in full – if the company is solvent and has the ability to pay the debt, it should do so;
- Appoint a Voluntary Administrator – if the company is insolvent or near insolvent and the directors wish to enter into an agreement with creditors by way of a Deed of Company Arrangement; or

- Appoint a liquidator – if the company is insolvent and the directors are of the opinion that the Company is not viable a formal winding up of the company should take place;

It is important to note that if you are a newly appointed director, you have 30 days to assess the company's taxation affairs before you become subject to personal liability for historical tax debts under the DPN Regime.

For more information on director penalty notices visit: slaventorline.com.au

There are two types of DPNs.

1. Traditional DPN

The traditional DPN gives a director 21 Days from the date of the DPN to take steps to avoid personal liability providing the company's PAYG returns and superannuation statements are lodged within certain time periods even if the amounts have not been paid. PAYG returns must be lodged within three months of their due date. Superannuation statements must be lodged by their due date, being within 28 days of the end of each financial quarter.

2. Lockdown DPN

If your company has not lodged its PAYG and superannuation statements on time, as a director, you automatically become personally liable for these amounts. The ATO can enforce the liability by issuing a "lockdown" DPN. In these circumstance you cannot avoid personally liability.