

Parliamentary Joint Committee on Corporations and Financial Services

Inquiry into Corporate Insolvency in Australia

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

January 2023

Agency: Australian Taxation Office
Question No:
Topic: Businesses with unpaid super entering payment plans following DPN awareness letter issuing
Reference: Spoken (13 December 2022)
Senator/MP: Paul Scarr

Question:

Senator SCARR: This is a very interesting piece of data—15,000 clients entered into a payment arrangement with the ATO once they received that awareness letter. We received evidence earlier today that one of the obstacles with respect to small businesses accessing the small-business restructure scheme is that, based on the conditions upon which it can be accessed, it cannot be accessed if you've got a payment arrangement in place with the ATO. So, there are potentially 15,000 small-business clients that cannot access the small-business restructure arrangements in the *Corporations Act* as a result of the fact that they're in a payment arrangement with the ATO. Is that correct? Are you aware of that issue?

Mr Busby: I'm not aware of that issue, but it's not a condition of entering into a small-business restructuring that you can't be under a payment plan; that's not a restriction at all.

Senator SCARR: We heard evidence today, unless I misheard it, that, if you're on a payment arrangement with the ATO—in particular, I think it might be if it's with respect to unpaid superannuation entitlements—you can't access the small-business restructure regime.

Mr Busby: I understand that now. It is a requirement that any due superannuation has to be paid as a precondition to enter into a small-business restructuring, so in that respect that would be right.

Senator SCARR: We've further defined the class. So how many of the 15,000 would include unpaid superannuation? Do you have any detail on that?

Ms Kitto: I don't have that level of detail.

Senator SCARR: Could you find out? Could you take that on notice? It would be very interesting to find that out, because, if it's thousands, these are potentially thousands of small businesses that are prevented from going down the small-business restructure route because they've already got a payment arrangement to repay the superannuation, and, from the ATO's perspective, almost by definition, if they meet the arrangement that's at least reasonably satisfactory; but they're prevented from going down the small-business restructuring path because of that. If you could take that on notice, thank you.

Answer:

Of the 14,693 businesses that entered into a payment plan following the issuing of a Director Penalty Notice awareness letter, 2,222 businesses had a superannuation guarantee charge debt.