

Parliamentary Joint Committee, Corporations and Financial Service

Corporate Insolvency in Australia

ANSWERS TO QUESTIONS ON NOTICE

Agency: Australian Taxation Office
Topic: Timing for issuing DPN
Senator/MP: Senator Deborah O'Neill

Question:

Ms Kitto: I'm not sure if that answers your question around the steps we go through once we issue the DPN? Are you looking for more information around the decision-making process of the staff?

CHAIR: Maybe on notice, just in relation to the timing- the time people are advised. I'm just trying to understand this from a small business point of view. You've given a really clear indication of how carefully you're attempting to engage with people. My question is: once that hits, how long is the response period of time, and what could happen then? We're running out of time, so I'll ask you to give that on notice so the committee is clear on it.

Answer:

A director of a company is under a legal obligation to cause the company to comply with its obligations. Where a director penalty notice (DPN) is given to a director in relation to outstanding company obligations, the director has 21 days to take certain steps to have their penalty remitted.

The 21-day period is determined by statute: see section 269-30 of Schedule 1 to the *Taxation Administration Act 1953*.

A director penalty is **remitted** within 21 days after the Commissioner of Taxation gives the director notice of the DPN, if:

- the company complies with its obligation i.e., payment in full or entering into an acceptable payment plan, or
- an administrator is appointed, or
- a small business restructuring practitioner is appointed (if applicable), or
- the company begins to be wound up.

However, if one of the above steps has not been taken within 21 days after notice is given the Commissioner may take steps to recover the penalty from the director personally. These steps may include:

- Garnishee
- Summons
 - Judgment
 - Bankruptcy Notice

Note: According to Practice Statement Law Administration (PS LA) 2011/18 a director appointed to a company that has outstanding PAYG and SGC obligations will become personally liable for a penalty equal to these amounts at the end of the 30th day after their appointment.

However, a new director will not be liable to director penalties for SGC or PAYG amounts due before their appointment if the company is placed into liquidation or administration, or the amounts are paid in full within 30 days of the date of appointment.