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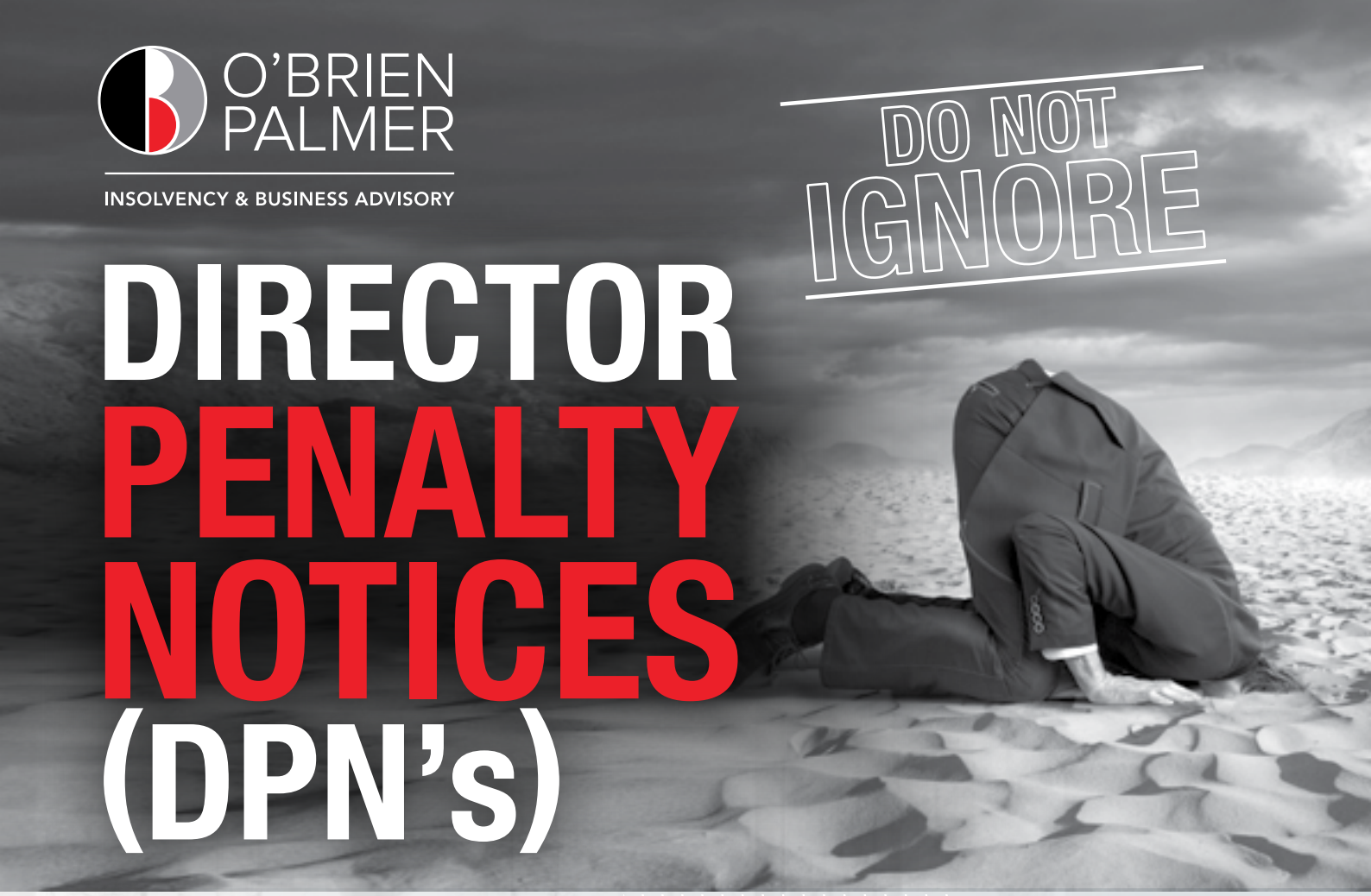

DIRECTOR PENALTY NOTICES (DPN's)

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THE PERSONAL IMPACT OF DIRECTOR PENALTY NOTICES (DPN'S)

Facing a Director Penalty Notice (DPN) can be a confronting experience for any company director. The personal liability attached to these notices can feel overwhelming, and many directors are caught off guard when they realise that their company's tax debts have become their own.

At O'Brien Palmer, we've worked with countless directors who suddenly find themselves under immense financial and legal pressure after receiving a DPN. The key takeaway? Time is critical. Acting quickly can mean the difference between protecting your assets and facing personal financial ruin.

1 WHAT IS A DIRECTOR PENALTY NOTICE?

A Director Penalty Notice (DPN) is issued by the Australian Taxation Office (ATO) to make a company director personally liable for unpaid tax debts. This includes:

- ✓ **Pay As You Go (PAYG) withholding tax**
- ✓ **Superannuation Guarantee Charge (SGC)**
- ✓ **Goods & Services Tax (GST)**

If your company has outstanding tax liabilities and hasn't taken steps to resolve them, the ATO can send you a DPN, holding you personally responsible for the debt.

2 THE TWO TYPES OF DPN's:

Not all DPNs are the same. There are two types of Director Penalty Notices, and the kind you receive determines your options for response.

1. 21-Day Director Penalty Notice (Traditional DPN)

This type of notice gives directors 21 days to take action and avoid personal liability. If your company reported its tax obligations within three months of the due date but didn't pay, you may be issued a Traditional DPN.

To avoid personal liability, you must, within 21 days of the notice:

- ✓ **Pay the tax debt (or enter into an arrangement to pay it)**
- ✓ **Appoint a company administrator**
- ✓ **Appoint a small business restructuring practitioner**
- ✓ **Place the company into liquidation**

If none of these steps are taken within the 21-day window, the ATO can pursue you personally for the debt.

2. Lockdown Director Penalty Notice

This is the most severe type of DPN and offers no 21-day grace period. If your company failed to report its tax liabilities within three months of the due date, you will receive a Lockdown DPN, making you immediately and personally liable for the debt.

How to remove personal liability?

The only way to avoid being held personally accountable under a Lockdown DPN is to pay the tax debt in full—administration, liquidation, or restructuring won't remove your personal liability.

This strict measure is designed to prevent directors from avoiding aged tax debts by simply shutting down a company and starting a new one (known as phoenix activity).

3 WHY ACTING QUICKLY MATTERS

One of the most critical aspects of a DPN is when the 21-day period begins.

The countdown starts from the date the ATO sends the notice—not the date you receive it. This means you could have far fewer than 21 actual days to respond.

To ensure you receive critical notices in time:

- ✓ **Keep your company records updated with ASIC.**
- ✓ **Regularly check your registered business address for mail.**
- ✓ **Act immediately if you suspect tax debts are an issue.**

Ignoring a Director Penalty Notice or failing to act within the timeframe can have serious consequences, including:

- ✖ **Personal liability for the company's tax debt**
- ✖ **The ATO initiating legal proceedings against you personally**
- ✖ **The potential for bankruptcy if the debt is large and unpaid**
- ✖ **A garnishee order being issued to seize funds from your bank account**

4 DEFENCES AGAINST A DIRECTOR PENALTY NOTICE

There are only two legal defences available for directors facing personal liability under a DPN:

1. Illness or Other Good Reason

If you can prove that due to serious illness or another valid reason, you were unable to participate in managing the company at the relevant times, you may have grounds for a defence.

However, this is a high bar to meet, and the courts apply a strict test to determine whether non-participation in company management was reasonable.

2. Taking All Reasonable Steps

If you can demonstrate that you took all reasonable steps to ensure one of the following actions took place, you may have a valid defence:

- ✓ Ensuring the company paid the tax debt
- ✓ Ensuring the company was placed into administration or liquidation
- ✓ Attempting to appoint a small business restructuring practitioner

If no reasonable steps were possible, you must prove why you couldn't take action.

Without a strong defence, personal liability under a DPN can be incredibly difficult to challenge.

3. What Are Your Options After Receiving a DPN?

If you've received a Director Penalty Notice, here's what you should do immediately:

- ✓ Contact an insolvency professional or tax debt specialist ASAP
- ✓ Determine if the notice is a 21-day DPN or Lockdown DPN
- ✓ Act quickly—delays could cost you your personal assets

4. What should I do if I receive a Director Penalty Notice?

If you receive a DPN, time is already running out. You should:

- ✓ Contact an insolvency expert or tax debt lawyer immediately
- ✓ Determine if your notice is a 21-day DPN or a Lockdown DPN
- ✓ Act quickly to explore your best options for resolution

At O'Brien Palmer, we help directors navigate Director Penalty Notices, negotiate with the ATO, and find the best possible outcome. A Director Penalty Notice is one of the most serious financial risks a company director can face. Ignoring it will not make it go away.

5 HOW CAN I AVOID RECEIVING A DIRECTOR PENALTY NOTICE?

To reduce the risk of receiving a DPN, directors should:

- ✓ **Ensure all tax obligations are lodged and paid on time**
- ✓ **Engage early with the ATO if struggling with payments**
- ✓ **Avoid illegal phoenix activity (transferring assets to a new entity to escape debts)**

A Director Penalty Notice is not something you should ignore or delay acting on. If you've received one, time is already running out. At O'Brien Palmer, we've seen first-hand how a proactive approach can help directors avoid personal liability and find a workable solution - whether that's through settlement negotiations, restructuring, or insolvency strategies. **Contact our team today for a confidential discussion on how we can help.**

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