

‘Marked increase’ in directors seeking help with DPNs

BUSINESS

Worrells says enquiries are up about 30 per cent and many directors are unaware of their personal liability.

By [Philip King](#) • 15 March 2023 • 5 minute read

More directors on the hook for company debt are reaching out for help with a “marked increase” in inquiries, says a principal of insolvency specialist Worrells.

Perth-based Mervyn Kitay said many directors knew their company had outstanding debts but were unaware of their personal liability until a director penalty notice (DPN) arrived from the ATO.

“We are now seeing a marked increase in inquiries from directors who are actually getting DPNs,” Mr Kitay said. “We’ve probably seen about a 30 per cent uplift in inquiries directly as a consequence of DPNs.”

“We’re seeing directors now becoming aware of the fact that they will be personally liable for the debts unless they put company into administration, liquidation or actually pay the debt.”

“Directors are generally aware debts are outstanding. The surprise bit is ‘What do you mean I could [be] personally liable for it?’”

The ATO said it had already dispatched 3,350 DPNs to directors with respect to 2,462 companies over the first two months of this year and was sending them at a rate of about 100 a day – roughly the same as the second half of 2022.

It had also disclosed 110 businesses to credit reporting agencies, taking the total to around 600 this financial year, and had hardened its line on referrals.

“Starting this calendar year, when a business meets the criteria for disclosure, they will automatically receive an intent to disclose notice which gives them 28 days to take action before the debt may be considered for disclosure to a credit reporting bureau,” the ATO said.

Mr Kitay said a DPN was a more effective ATO weapon because it was personal and some directors were oblivious to their parlous position until the notice arrived. Where the

company had failed to meet lodgement dates for key liabilities such as BAS or the Super Guarantee Charge, they could receive a lockdown DPN.

“Directors very often themselves are unaware that their lodgements are late, very often they entrust that to the services of an employee with the organisation,” he said.

“With a lockdown DPN directors for a long period of time – and very often right into the liquidation process – remain oblivious to the fact that within the ATO system, a lockdown DPN has been issued.”

He said the ATO’s resumption of debt collection activity last year was chasing collectible debt of almost \$45 billion, up from a pre-pandemic figure of less than \$27 billion.

“That’s indicative of the fact that previous monies which ought to have been collected, haven’t been collected.

“A lot this is legacy debt that has not been paid down, and there’s been a fresh accumulation of debt which hasn’t been paid as a direct consequence of COVID and the financial implications that flowed from COVID.”