

ALERT

19 OCTOBER 2011

Directors now automatically liable for SGC

On 13 October 2011, amendments to the taxation legislation were introduced to the House of Representatives to impose upon directors automatic personal liability if their entity does not meet its taxation liabilities for 3 months or more.

The *Tax Laws Amendment (2011 Measures No 8) Bill 2011* proposes a variety of amendments to taxation legislation. These include amendments to the consequences of a company's non-compliance with PAYG withholding and superannuation guarantee obligations. At a general level, the proposed amendments:

- extend the director penalty regime to make directors personally liable for their company's unpaid superannuation guarantee amounts (in addition to the existing liability for PAYG withholding);
- if the company's liabilities to the ATO are not paid by the company for 3 months or more, in some instances allow the Commissioner of Taxation to commence proceedings against the directors without the need to first issue directors' penalty notices; and
- in some circumstances, make directors and their associates liable for PAYG withholding tax where the company has failed to pay amounts withholding to the ATO.

The government's intention behind the amendments is to ensure that directors cause their company to meet certain tax obligations, or alternatively to promptly put the company into liquidation or voluntary administration. The changes are also intended to deter company directors from engaging in phoenix activities (Explanatory Memorandum).

Having regard to these proposed amendments, it is especially crucial for directors to be aware of their obligations and to act promptly to ensure the company's liabilities are met, or that alternate strategies are put in place. A failure by a company to meet its liabilities may lead to its directors becoming personally liable for debts incurred by the company.

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