- NEW LAWS -
REGARDING DIRECTORS AND THE TAX OFFICE

Legislation was proposed in May 2012 to expand the Australia Taxation Office's power regarding director penalty notices. The legislation received Royal Assent on 29th June 2012 and is now law.

The new law imposes serious penalties for non-compliance on all company directors. Directors operating through companies must mitigate their personal liability risk by effectively managing tax liabilities.

The major changes for directors are:

Directors face a series of new obligations and challenges, including:

- Being held personally liable for unpaid superannuation
- Greater difficulty in wiping out personal liabilities
- The denial of PAYG in certain circumstances.

1. **Directors are now liable for superannuation guarantee payments**

The director penalty regime will be extended to superannuation guarantee (SG) amounts. This means company directors can now be made personally liable for a failure to pay employees' SG amounts.

2. **Greater difficulty for directors to wipe out personal liabilities**

Under the old laws there were a number of ways directors could extinguish their personal liabilities in regard to PAYG or SG amounts owed. These were by paying the debt, appointing an administrator or winding up the company. On receiving a penalty notice, a director had 21 days to take any of these actions to avoid personal liability.

The new penalty regime continues to apply, however there is now an additional condition; if company liabilities remain unpaid and reported three months after they were due, director penalties are not extinguished if companies are placed in administration or wound up. Directors will now be automatically held personally liable for all the amounts they owe.

3. **Directors may now be denied PAYG credits**

Under the old penalty regime, company directors and their associates (including family members) were entitled to PAYG credits on salaries, even if the company had not paid PAYG amounts to the ATO. Now, if company owes PAYG amounts, PAYG credits may be denied to directions and associates.
But the consequences go even further. If these parties are paid wages, these wages will be grossed up as if no PAYG was paid on them and directors and others will be made personally liable for the amounts owing.

Other associated changes

The new penalty regime presents other reforms for directions, including:

- New directors are not liable for penalties for company debts until 30 days after they take on their role
- The ATO can now estimate unpaid SG charges, in addition to estimating unpaid PAYG liabilities
- The ATO can serve a copy of a director penalty notice on the director at his or her tax agent's address

If you don't comply with the ATO's notice you could suffer serious consequences, such as losing personal assets including property, cars, shares and more. This could have a major impact on your company's ability to function and your personal affairs.

Note – your company would have already received a notice of the debt prior to the issue of a penalty notice; where there is a debt, arrangements should be made at that time.

Should you be served with such a penalty notice you should contact our office
on (02) 4571 3599.