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Changes to Superannuation Director Penalty Notices (effective 1st April 2019)

Background

The Treasury Laws Amendment (2018 Measures No. 4) Bill 2018 received Royal Assent on 1 March 2019. This Bill amends the reporting timeframes for superannuation regarding whether a Director Penalty Notice (DPN) is either lockdown or non-lockdown. There has been no change for PAYG and the three-month from due date rule continues to apply.

Just to recap on the DPN Regime prior to today:

- Directors of a company can be held personally liable for the PAYGW and Superannuation amounts payable by a company if the amounts are not reported within the three (3) months of their due date.
- A DPN may take the form of a Lockdown DPN or Non-Lockdown DPN.
- Under a Non-Lockdown DPN, remission options given to directors include:
 1. Paying the debt;
 2. Appointing a Voluntary Administrator; or
 3. Placing the company into Liquidation under a Creditors Voluntary Liquidation.
- A Lockdown DPN will **not** provide the Non-Lockdown remission options above and the amount becomes a debt due by both the company and its directors.
- If amounts relating to PAYGW and Superannuation are at least reported within three (3) months of their due date, but no actual remittance of the sums due, then the directors escape personal liability on the proviso that the company takes the action referred to above within the 21 days referenced in the DPN.

So what's the Position now from 1 April 2019 for Superannuation

The above Act now amends that Superannuation aspect under the DPN regime only. PAYGW remains the same as before with the three (3) month rule from due date reporting to avoid personal liability of directors.

The new law eliminates the three (3) month from due date rule for superannuation reporting only. The Superannuation amounts must be reported by their due date i.e. within 28 days of the end of each lodging date and not the former three (3) month from due date for the director to have any opportunity to remit the penalty.

As professional advisors, you must be aware of this significant change to the DPN regime and it is incumbent on us to ensure that our client directors are aware of this significant change to the law.

As always, if you or your clients need advice on any business turnaround or insolvency matters do not hesitate to contact us.

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